Residential
Tenancy
Commission

Residential Tenancy
Commission

Summaries of Significant Decisions

1980 1 R.T.C.

THE RESIDENTIAL TENANCY COMMISSION

SUMMARIES OF SIGNIFICANT DECISIONS - VOLUME 1

CITED (1980), 1 R.T.C.

This volume contains summaries of significant decisions and reasons given. If reference to the original full order and reasons is desired, contact the head office of the Residential Tenancy Commission at 77 Bloor Street West, 3rd Floor, Toronto, Ontario.

Published pursuant to The Residential Tenancies Act, 1979, S.O. 1979, c. 78, s. 81

Additional copies available through
Publication Services Mail Order,
880 Bay Street, 5th Floor,
Toronto, Ontario.
M7A 1N8.

or at the Ontario Government Book Store

With the publication of this Volume, the Residential Tenancy Commission is pleased to present the first in a series of volumes of Summaries of Significant Decisions of the Commission. Cases selected for publication include decisions made by individual Commissioners at initial hearings, as well as decisions made by Appeal Panels of the Commission. Cases summarized herein are based on decisions made by the Commission during the period from December 1, 1979 to July 31, 1980.

THE RESIDENTIAL TENANCY COMMISSION

CHIEF TENANCY COMMISSIONER AND CHAIRMAN OF THE BOARD:	P. C.	Williams		
MEMBERS OF THE BOARD OF COMMISSIONERS:	D. A.	Dukelow	E. J.	Pollock
	S. V.	Fram	H. F.	Snyder
	G. E.	Isaac	J. H.	Thomson
APPEAL COMMISSIONERS:	W. D.	Biggar	N. L.	Myrhorod
	J. F.	Bordeleau	P. P.	Tatay
	N. B.	Doorenspleet	K. J.	Timney
	M. S.	Green		
COMMISSIONERS:	R. S.	Bentley	S. L.	Marshall
	A. J.	Durbacz	D. H.	Niblock
	R. P.	Grimson	L. W.	Preston
	C. E.	Harrott	A. D.	Sandeman
	D. L.	Heller	J.	Sawchyn
	J. B.	Jennings	H. R.	Shaw
	H. M.	Little	G. R.	Tait
	P. A.	Loftus	J. B.	Veitch
	D. C.	MacDonald	L. V.	Wilton
	G. I.	Mandel	R. C.	Yurkoski
SENIOR LEGAL COUNSEL:	A. A.	Hermant, Q.C.		

77 Bloor Street West
3rd Floor
Toronto, Ontario
M5S 1M2

Summaries of Decisions
Volume 1

TABLE OF CONTENTS

Page

Re 321 Ambrose Street, Thunder Bay
File Number 129-TB-027

Capital expenditures - improvements made to unit - whether to increase base rent or treat as capital expenditures and amortize 1

Re 65 Arcadian Circle and 1A Birchlea Ave., Toronto
File Number 126-ET-036

Standard of maintenance and repair - whether a low standard that represents no change from the previous low standard will influence the amount of rent increase allowed 3

Re 587 Avenue Road, Toronto
File Number 126-TO-049

Financial loss - considera ions re spreading

Apportioning the rent increase - considerations 5

Re 326 Bethune Street, Thunder Bay
File Number 129-TB-028

Illegal rent increases - excess rents paid by tenant under a mistake of law - whether refund will be ordered 7

Re 1900 Bloor St. E., Mississauga
File Number 126-MS-013

Illegal rent increases - treatment of past illegal rent increases on a landlord's application for rent review 9

Re 1 Coronation Blvd., Lively
File Number 126-SD-018

Financing costs - whether a landlord should receive an allowance for loss of use of funds experienced on the pay-out of a mortgage

Standard of maintenance and repair - reduction in services - whether allowing only supervised use of swimming pool constitutes a deterioration in the standard of maintenance 10

Re 303-1030 Derby St., Ottawa
File Number 129-OT-067

Illegal rent increases - excess rents paid to prior landlord - whether present landlord must repay 12

Page

Re 166 Duke St., Dryden
File Number 126-KN-029

Financing costs - treatment of a non-interest bearing demand loan 13

Re 40 Gerrard St. E., Toronto
File Number 126-TO-048

Procedure - whether adjournment should be granted to permit tenants to examine material submitted by landlord when all time limits of The Residential Tenancies Act have been met

Operating costs - whether rent increases should reflect decreased as well as increased costs incurred by the landlord 14

Re 73 Hewitt Ave., Toronto
File Number 129-TO-015

Renovations - whether renovations carried out by the landlord were sufficient to create a "new unit" on which a new rent could be set - section 4(6) of The Residential Premises Rent Review Act 18

Re 45 Livingston Road, Scarborough
File Number 126-SB-001

Standard of maintenance and repair - whether a landlord's profits derived from the operation of a residential complex should be reinvested to raise the standard of maintenance in the building 21

Re 255-265-275 Main Street and 2475 Danforth Ave., Toronto
File Number 127-TO-145

Exemptions - section 134(1)(a) of The Residential Tenancies Act - "owned, operated or administered by or on behalf of the Government of Canada" 23

Re Coventry Place, Meadowbrook Lane, Windsor
File Number 126-WN-008

Operating costs - whether "bad debts" are a proper operating expense

Amount of rent increase - whether must be geared to the national inflation rate 26

Re 809 Nichols Street, Peterborough
File Number 126-PB-028

Financing costs - non-arm's length - treatment of mortgage payments where mortgagee is landlord's mother 28

Page

Re 14 Norris Place, St. Catharines
File Number 126-SC-001

Financing costs - whether the inflated acquisition cost alleged to have been paid for complex by new landlord should be reduced to market value before determining any rent increase 30

Re 93 Northcliffe Blvd., Toronto
File Number 126-TO-071

Service - section 98(1) of The Residential Tenancies Act - landlord shall promptly give copy of his application to the Commission to any tenant etc. - meaning of the word "promptly" 31

Re 700-730 Ontario Street, Toronto
File Number 127-TO-019

Procedure - time limits - when a Commissioner should exercise his discretion to extend under section 97 of The Residential Tenancies Act

Standard of maintenance and repair on a tenant's application under section 127 - time period to be considered 34

Re 521 Park Street, Kitchener
File Number 126-KT-018

Capital expenditures - when projected costs will be considered 40

Re 1673 Talon Street, Val Therese
File Number 126-SD-061

Multi-year cost pass-through - no rent increases taken since 1974 41

Re 4-340 Traynor Avenue, Kitchener
File Number 127-KT-020

Amount of rent increase - "reduced rent" charged for term of lease pending renovations to complex - whether increase now restricted to six percent of reduced amount only 42

Re 959 Victoria Avenue, Windsor
File Number 129-WN-001

Illegal rent increases - whether section 138 of The Residential Tenancies Act prohibits the application of section 129 of the Act with respect to illegal rent increases which occurred prior to December 1, 1979 44

Page

Re 14-16 Westdale Drive, Welland
File Number 126-SC-008

Notice of rent increase - whether serving on tenants a notice specifying a certain rent increase precludes the landlord from proposing a higher increase at the hearing 46

Re 3-5 Wilberton Road, Toronto
File Number 126-TO-106

Multi-year cost pass-through - no rent increases taken since 1975 47

Re 61 Williams Street, South Porcupine
File Number 129-TM-072

Exemptions - section 134(1)(c) of The Residential Tenancies Act - tenancy agreement made before but occupation took place after January 1, 1976 - whether unit is exempt 48

IN THE MATTER OF:	321 Ambrose Street Thunder Bay, Ontario.
BETWEEN:	Peter Turner (Tenant) - and - John Baillie & Phillip Spakowski carrying on business as Westpac Ventures (Landlord)
COMMISSIONER:	Ronald C. Yurkoski
DATE OF ORDER:	July 10, 1980
FILE NUMBER:	129-TB-027
ISSUES:	Capital expenditures - improvements made to unit - whether to increase base rent or treat as capital expenditures and amortize

The tenant applied under section 129 of The Residential Tenancies Act for an order that the landlord refund excess rents paid, and for a declaration of the rent that could lawfully be charged.

The tenant commenced occupation of one of the four rental units in this residential complex on or about the 15th day of August, 1979, at an agreed monthly rent of $235.00. It was established that the rent paid for this unit during the term of the previous tenancy ending July 2, 1979 was $185.00 per month, and that no application for rent review had been made by the landlord before the rent was increased.

After commencing his tenancy, the applicant was supplied with a refridgerator and stove for the unit, and it was agreed with the landlord that $5.00 each would be a reasonable monthly charge for those appliances. In November of 1979, the landlord further installed a shower in the unit, thereby relieving the tenant of the necessity of sharing bathroom facilities with another tenant.

The Commissioner calculated that the lawful rent paid for the unit on the commencement of the tenancy could have been $185 + 6% or $196, since no increase had been taken in the past 12 months. As

both parties had also agreed to a separate $10 per month charge for appliances, the lawful rent became $206. The landlord argued that the value of the shower installed should also constitute a separate charge and be added to the rent in the same fashion as the appliances were, but the Commissioner decided that the value to be placed upon this improvement was indeterminable insofar as the fixing of a separate charge was concerned. It was suggested instead that the installation of the shower was a capital expenditure, and could be considered as such on an application for rent review by the landlord.

The amount of overpayment was then calculated and an order directing a refund to the tenant issued accordingly.

IN THE MATTER OF:	65 Arcadian Circle and 1A Birchlea Avenue Toronto, Ontario.

AND IN THE MATTER OF an application for rent review by Morris Alter (Landlord)

COMMISSIONER:	M. Green
DATE OF ORDER:	February 20, 1980
FILE NUMBER:	126-ET-036
ISSUES:	Standard of maintenance and repair - whether a low standard that represents no change from the previous low standard will influence the amount of rent increase allowed

The landlord of these two ten unit residential buildings applied under section 126 of The Residential Tenancies Act for an order allowing him to increase the rents charged by more than the permitted maximum of six percent. At the hearing, the tenants' representative argued that the Commissioner should apply section 131(1)(c) of the Act, which directs consideration of an improvement or deterioration in the standard of maintenance and repair of the complex. It was argued on behalf of the tenants that there had been a deterioration in the standard, and that the rent increases found to be justified should reflect this decline. The tenants' representative informed the Commissioner that there existed several outstanding work orders issued by the Etobicoke Building Standards Officer, indicating that the standard of maintenance and repair in the complex was lacking.

The Commissioner referred to the financial data already placed in evidence by the landlord and noted that the building was operating in a financial loss position. He then commented that while it was apparent that the standard of maintenance in the building was low, because of this, the rents charged were similarly low. If the level of maintenance in the building were to increase, then so would the rents. The Commissioner pointed out that section 131(1)(c) requires a

consideration of an "improvement or deterioration" in the standard or in other words, a change. Although the level of maintenance in these buildings was low, it had apparently always been low, and thus there was no "change" to consider.

The justified rent increase was then calculated and an order setting out the maximum monthly rents issued accordingly.

IN THE MATTER OF: 587 Avenue Road
Toronto, Ontario

AND IN THE MATTER OF an application for rent review by High Value Consultants Limited (Landlord)

COMMISSIONER: G. E. Isaac

DATE OF ORDER: March 31, 1980

FILE NUMBER: 126-TO-049

ISSUES: Financial loss - considerations re spreading

Apportioning the rent increase - considerations

The landlord of this twenty-two unit residential complex applied under section 126 of The Residential Tenancies Act for an order allowing it to increase the rents charged by more than the permitted maximum of six percent.

At the hearing, several submissions were made on behalf of the tenants concerning the apportionment of the justified rent increase among the subject units and the pass-through of the landlord's financial loss to the tenants in the form of rent increases.

The Commissioner noted that the Detailed List of Proposed Rents as submitted by the landlord indicated disparities in rents for similar units. Minor disparities appeared to be due to historical differences in rent, perhaps because of the introduction of The Residential Premises Rent Review Act in late 1975 and its consequent effects. Major disparities apparently related to the cycle of the tenancy period, since units whose rents were reviewed in the previous fall had considerably higher rents than those for which increases were due in the early part of the year. To eventually achieve equalized rents, the latter units were apportioned greater increases in the landlord's list of proposed rents. After making some adjustments to the figures, the Commissioner allowed this scheme of apportionment

to remain, commenting that: "Because in the past there has been disparity in the rents for similar accommodation, to achieve equalized rents now there are differences in percentage increases being granted. To do otherwise would perpetuate the disparity."

It was established that at the last rent review hearing a decision had been made to spread the financial loss suffered by the landlord over a period of three years for the purposes of determining rent increases. A third of the loss determined was accordingly considered on that prior review. The tenants' representative argued that the loss should be spread over a period longer than three years. Commissioner Isaac considered the submissions made and also referred to the Interpretation Guideline dealing with financial loss as issued by the Board of Commissioners of the Residential Tenancy Commission, which suggests that losses, other than normal operating losses, be eliminated in a manner that attempts to avoid unnecessary hardship to landlords and tenants alike. It was noted here that the existing loss was in fact due to other than normal operating conditions, since it resulted from financing costs incurred on the landlord's recent purchase of the property. The Commissioner recognized that the landlord was caused a measure of hardship because of the loss, but also noted that: "There may, similarly, be hardship imposed on the tenants were the landlord to immediately increase the rents to an extent sufficient to extinguish his loss." The decision made at the prior rent review hearing to spread the loss over three years was seen as an attempt to reconcile these opposing positions. The landlord's loss was considered, but this was to be done over a period of time by way of gradual rent increases so as to mitigate the impact on the tenants. Commissioner Isaac was of the opinion that "It was not unreasonable to have [the landlord] begin to attain a break-even position thereafter" and therefore accepted the approach taken and allowed the second third of the loss as previously calculated.

The hearing was concluded and the justified rent increase calculated accordingly.

IN THE MATTER OF:	326 Bethune Street Thunder Bay, Ontario.
BETWEEN:	John Godfrey Sr. (Tenant) - and - Dan Danylko (Landlord)
COMMISSIONER:	Ronald C. Yurkoski
DATE OF ORDER:	July 7, 1980
FILE NUMBER:	129-TB-028
ISSUES:	Illegal rent increases - excess rents paid by tenant under a mistake of law - whether refund will be ordered

The tenant applied under section 129 of The Residential Tenancies Act for an order that the landlord refund excess rents paid and for a declaration of the rent that could lawfully be charged.

The subject rental unit was a single family dwelling that had been occupied by the applicant for twelve years. Placed in evidence at the hearing was a written agreement entered into by the parties on February 3, 1979 outlining a rent increase of $50.00 commencing March 1, 1979, which had the effect of raising the rent 34% from $145.00 to $195.00. The tenant paid this amount up to and including the first day of June, 1980, and then made this application to the Commission on June 10, 1980. A hearing was held when the Commissioner's attempt at mediation did not succeed.

The landlord was represented by counsel at the hearing, who relied on section 115(2)(a)(ii) of The Landlord And Tenant Act, R.S.O. 1970, c. 236, as am. in support of his contention that the aforementioned written agreement was valid and binding on the parties. This section states as follows:

> (2) "Where a tenant who receives a notice of rent increase fails to give to the landlord notice of termination... he shall be deemed to have accepted,

(a) where the amount of the rent increase is not subject to review by law,

(i) the amount of the rent increase specified in the notice of the landlord or

(ii) such other rent increase as may be agreed upon in writing between the landlord and the tenant; or

(b) where the amount of rent increase is subject to review by law, such amount of rent increase as does not exceed the amount allowed under the law."

The Commissioner referred counsel to subsection (2)(a) of the said section, pointing out that in this case the amount of rent increase was and still is clearly subject to review by law, pursuant to section 5(1) of The Residential Premises Rent Review Act, 1975 and section 126 of The Residential Tenancies Act. Subsection 2(a)(ii) then, cannot apply, and the tenant can be deemed to have accepted only so much of a rent increase as does not exceed six percent.

The Commissioner then consulted Interpretation Guideline No. RR-8 as issued by the Board of Commissioners of the Residential Tenancy Commission, which deals with the matter of excessive rent increases. This guideline suggests in part that the public policy inherent in rent review legislation supersedes the intent of the parties themselves. It further suggests that excessive amounts paid are recoverable whether or not the payment resulted from a mistake of law of either party or from agreement between the parties in full knowledge of the facts and law.

The Commissioner agreed with the reasoning in this Guideline and thought it appropriate to apply in this case, where the tenant had made payments under a mistake of law. The excess rent paid was then calculated and an order issued directing the refund of this amount and declaring the maximum monthly rent that could be charged.

IN THE MATTER OF: 1900 Bloor Street East
Mississauga, Ontario

AND IN THE MATTER OF an application for rent review by Canba Investments Limited (Landlord)

COMMISSIONER: J. B. Jennings

DATE OF ORDER: March 31, 1980

FILE NUMBER: 126-MS-013

ISSUES: Illegal rent increases - treatment of past illegal rent increases on a landlord's application for rent review

The landlord of this multi-unit high-rise residential complex applied under section 126 of The Residential Tenancies Act for an order allowing it to increase the rents charged by more than the permitted maximum of six percent. As is required on such an application, the landlord filed with the Commission a list of the present monthly basic rents for the subject units. The Commissioner examined the list, and compared it with the past rents charged. After considering orders issued in 1976 under The Residential Premises Rent Review Act, the provisions of that Act, and the fact that no further orders were issued between that time and the current application, the Commissioner concluded that many of the rents being charged at the time surpassed the amounts that would be permitted had the relevant rent review legislation been adhered to. As a result of these illegal increases having been taken in the past, the Commissioner found it necessary to adjust downwards a substantial majority of the base rents, so as not to build these improper increases into the rent forever.

The justified rent increases, as calculated by the Commissioner, were then added to the adjusted base rents to form the new maximum rents.

IN THE MATTER OF: Lively Manor,
1 Coronation Blvd.,
Lively, Ontario.

AND IN THE MATTER OF an application for rent review by Nickel Basin Properties Limited (Landlord)

COMMISSIONER: A. J. Durbacz

DATE OF ORDER: February 25, 1980

FILE NUMBER: 126-SD-018

ISSUES: Financing costs - whether a landlord should receive an allowance for loss of use of funds experienced on the pay-out of a mortgage.

Standard of maintenance and repair - reduction in services - whether allowing only supervised use of swimming pool constitutes a deterioration in the standard of maintenance.

The landlord of this large multi-unit residential complex applied under section 126 of The Residential Tenancies Act for an order allowing it to increase the rents charged beyond the permitted maximum of six percent. At the hearing, it was argued on behalf of the landlord that the amount of rent increase ordered should compensate the landlord for loss of use of funds it experienced when it paid out the mortgage on the subject complex. The Commissioner did not accept this view, stating that he could not give credit for what "could have happened" had the landlord put these funds to a different use.

The tenants voiced a complaint regarding the landlord's policy with respect to use of the swimming pool. It was argued that in allowing only supervised use of the pool, the landlord had cut back on its availability, thus resulting in a reduction in services with no accompanying reduction in rent. The Commissioner examined O. Reg. 792/77 under The Public Health Act, R.S.O. 1970, c. 377 and found that there was no specific requirement that a lifeguard be present to supervise this "Class B" pool. However, it was noted that the

Department of Health and the Royal Life-Saving Society strongly recommend that all such pools be supervised at all times. The Commissioner therefore concluded that the landlord's policy of allowing only supervised use was "prudent and reasonable" and declined to find that a reduction in services had occurred.

The tenants also argued that the conversion of the children's playroom into a laundry room and superintendent's workshop amounted to a reduction in services, but the Commissioner found that the current use balanced the loss of the former.

In the result, the justified rent increase was calculated and an order setting out the maximum monlthly rents issued accordingly.

IN THE MATTER OF:	Apartment 303 1030 Derby Street Ottawa, Ontario
BETWEEN:	Ernest Thomas and Danielle Thomas (Tenants) - and - Sante Battistin (Landlord)
COMMISSIONER:	H. F. Snyder
DATE OF ORDER:	January 23, 1980
FILE NUMBER:	129-OT-067
ISSUES:	Illegal rent increases - excess rents paid to prior landlord - whether present landlord must repay

The tenants applied under section 129 of The Residential Tenancies Act for an order that the landlord refund excess rents paid, and for a declaration of the rent that could lawfully be charged.

The applicant tenants moved into the subject unit on or about the 15th day of November, 1977, and resided there until October 31, 1979. The Residential Premises Rent Review Act, which was in force throughout the term of this tenancy, limited the amount of a rent increase without application to a Rent Review Officer to six percent. It was established at the hearing that the tenants had been paying rents beyond this limit contrary to the provisions of this Act, and were therefore entitled to a refund of the excess paid.

It appeared however, that the present landlord had not obtained a conveyance of the subject complex until December 12, 1977, which resulted in the tenants having paid their first month's rent to the prior landlord. The Commissioner took the view that the present landlord was not responsible for repaying rents charged by the previous landlord that were in excess of those permitted under The Residential Premises Rent Review Act. Accordingly, the order that was made did not provide for repayment of excess rents paid during the first month of the tenancy.

IN THE MATTER OF:	166 Duke Street Dryden, Ontario
AND IN THE MATTER OF an application for rent review by Sharon J. Moody (Landlord)	
COMMISSIONER:	Glenn R. Tait
DATE:	April 3, 1980
FILE NUMBER:	126-KN-029
ISSUES:	Financing Costs - treatment of non-interest bearing demand loan

The landlord of this single unit residential complex applied under section 126 of The Residential Tenancies Act for an order allowing her to increase the rents charged by more than the permitted maximum of six percent.

It was determined that the landlord had financed the complex by way of a non-interest bearing demand loan. In deciding how to treat this cost, the Commissioner consulted the Interpretation Guidelines as issued by the Board of Commissioners of the Residential Tenancy Commission. He noted that the Guideline dealing with Capital Expenditures [Guideline No. RR-3] suggests that even though a landlord may use his or her own cash to finance a capital expenditure, the Commissioner may deem an amount of interest and recalculate the expenditure making an allowance for that deemed interest charge, so as not to penalize an owner for using his or her own funds rather than borrowing the money.

Even though financing costs and not capital expenditures were at issue here, the Commissioner decided that it would be appropriate to apply the above noted principle in this case. Consequently, an interest rate of 14-1/2% per annum, the conventional mortgage rate in existence when the building was purchased, was deemed and an amortization period of 25 years applied to arrive at a yearly amount representing financing costs.

The review was completed and the justified rent increase calculated accordingly.

IN THE MATTER OF: 40 Gerrard Street East
Toronto, Ontario.

AND IN THE MATTER OF an application for rent review by First City Developments Ltd. (Landlord)

APPEAL PANEL: P. Tatay, K. Timney, J. Thomson

DATE OF ORDER: June 18, 1980

FILE NUMBER: 126-TO-048

ISSUES: Procedure - whether adjournment should be granted to permit tenants to examine material submitted by landlord when all time limits of The Residential Tenancies Act have been met.

Operating costs - whether rent increases should reflect decreased as well as increased costs incurred by the landlord.

The landlord of this high-rise multi-unit residential complex applied under secton 126 of The Residential Tenancies Act for an order allowing him to increase the rents charged by more than the permitted maximum of six percent. At the hearing held on November 29, 1979, Commissioner Grimson was faced with over 100 written requests from tenants for an adjournment, with the following given as reasons for the request:

1. Insufficient time between date of notification of hearing and receipt of application (27 days);

2. Material from landlord re justification, etc. not announced as available until November 6, 1979;

> In view of the foregoing and to permit us to properly respond and prepare a case, we are seeking the help and assistance of the Metro Tenants Legal Services who have advised us our request for a postponement would seem reasonable and appropriate in view of points 1 and 2 mentioned above and the fact the effective date of the first increase is February 1, 1980".

The Commissioner considered these arguments and then noted that the landlord had "more than fulfilled" the time requirements set out in the Act with respect to the filing of its Application for Rent Review and the data intended to be relied on at the hearing. Since there was no representative from Metro Tenants Legal Services at the hearing to offer further argument, and since the landlord was prepared to proceed, the Commissioner was of the opinion that "[he] could conduct an adequate hearing, and little would be gained by adjourning". The requests were denied accordingly.

The landlord submitted a Cost Revenue Statement which detailed, along with other pertinent financial data, the operating costs incurred in running the complex. It was apparent from these figures that a large decrease in operating expenses had occurred as between the year ended November 30, 1978, and the year ended November 30, 1979. It was determined by the Commissioner after hearing submissions from the parties on the matter and studying a brochure distributed by the landlord welcoming tenants to the complex and outlining its features, that the reason for this decrease could be traced to the change in security systems that had occurred during the year in question. It was established that when the building was completed in late 1974, the tenants were promised "security on a 24-hour basis with regular garage controls included". Previously, contact with a tenant could only be made through a security guard, and a guard was also stationed in the garage for twelve hours per day. On or about October 1, 1978, the security system was replaced with the existing Bell Enterphone System modified for direct dial to the tenant's suite. The

change in systems resulted in a decrease in operating costs of $69,933, since the cost for security in 1978 was $74,977 and in 1979, had dropped to $5,044. This resulted in a net decrease of $64,118, when considered with other increased costs.

Despite the landlord's objections, the Commissioner decided to include this decrease in his calculations, thus reducing the allowable rent increase. It was considered that tenants were in effect still paying for the more expensive system, as the original 1974 rent structure would have (presumably) included costs based on the security system then existing. The Commissioner commented that "the rents presently under review have those costs, not only built in, but expanded by rent increases taken since that time". It was pointed out to the landlord that cost changes and not solely cost increases are considered on a rent review, and that further, section 131 of The Residential Tenancies Act allows the Commissioner to base his or her finding of justified costs not only on anticipated costs, but also on experienced costs.

The landlord argued that if management had continued the use of the original security system, financial loss would have occurred and an application for a further rent increase would have been required on that basis. The Commissioner was of the view that this hypothetical situation should not be taken into account.

The review was then completed, and the justified rent increase calculated accordingly.

The landlord and three of the tenants appealed this order on several grounds. One of the landlord's submissions was that the Commissioner should not have considered the reduction in security costs in his calculations. After hearing argument from all parties, the panel agreed with the landlord that the amount of the decrease should not have been considered. The panel did not think it justifiable to consider cost changes from Year 2 to the projected year and then significantly alter the net effect of such changes by allowing "a select number of cost decreases (or increases) from an earlier financial year,

out of context and without a full examination of all factors affecting such earlier fiscal periods". The panel also considered that the inclusion of this decrease would "predictably cause a financial loss in respect of this residential complex for the year ending November 30, 1980 by establishing rents below the level required for a break-even" and that such a result would be contrary to section 131(1)(b) of the Act, "which calls for a finding of the Commission concerning a financial loss that the landlord has experienced or will experience."

The panel recognized that without the savings obtained by the changes in security, the landlord may well have been forced to apply for higher increases in 1978 and 1979. Further, these savings were reflected in a lower rent structure and reduced operating cost increases. The panel therefore did not include the $64,118 decrease in security costs in its calculation of the justified rent increase, and it was pointed out to the tenants that any objections they had as to the adequacy of the new security system were a matter of contract and therefore outside the jurisdiction of the Commission.

After ruling on a number of other unrelated arguments, the panel set aside the order of Commissioner Grimson and substituted a new order setting out new maximum monthly rents.

IN THE MATTER OF:	2nd Floor Apartment 73 Hewitt Avenue Toronto, Ontario.
BETWEEN:	Jo Turlings (Tenant) - and - Len Rudenko (Landlord)
APPEAL PANEL:	E. Pollock, J. Thomson, D. Biggar
DATE OF ORDER:	July 11, 1980
FILE NUMBER:	129-T0-015
ISSUES:	Renovations - whether renovations carried out by landlord were sufficient to create a "new unit" on which a new rent could be set - section 4(6) of The Residential Premises Rent Review Act

The tenant applied under section 129 of The Residential Tenancies Act for an order that the landlord refund excess rents paid, and for a declaration of the rent that could lawfully be charged.

It was established at a hearing held before Commissioner Isaac that the tenant had entered into a written lease with the landlord for occupancy of the second floor apartment, 73 Hewitt Avenue, for a fixed term beginning January 1, 1979 and ending December 31, 1979, at a monthly rent of $400.00. It was further established that the immediately preceeding tenants had been paying a monthly rent of $175.00 to the prior landlord, and that the present landlord had taken possession of the premises in December of 1978.

The landlord argued that this rent increase of $225.00 was justified as a result of extensive renovations he had carried out on the unit. He claimed that by installing heating in previously unheated areas and plastering, painting and panelling walls, he had greatly increased the usable area of the second floor. Improvements were also made to other areas of the apartment and appliances were purchased for the use of the tenants. As a result, the landlord contended that a new unit had effectively been created.

Commissioner Isaac accepted the landlord's evidence concerning improvements made, but did not agree with the landlord's submission that the changes were extensive enough to create a new unit. Consequently, the Commissioner reduced the lawfully chargeable rent to $193.00 ($175.00 + 6% + $7.50 per month for the new appliances), and pointed out to the landlord that he could apply for a higher increase that would reflect the improvements carried out by making an application under the rent review provisions of the Act. An order was then issued directing the landlord to repay to the tenant all excess rents collected.

The landlord appealed this order on the grounds that Commissioner Isaac had erred in not finding that a new unit had been created as a result of the renovations made. The landlord provided the appeal panel with before and after sketches of the unit and detailed descriptions of the work done, which illustrated that the end result of the renovations performed was to increase the habitable area of the unit from approximately 836 square feet to about 1042 square feet and to make the back porch usable. The landlord submitted that a new luxury apartment had been created and that he should therefore be permitted to set a new rent for it, without regard to the previous rent charged.

It was argued on behalf of the tenant that the repairs made by the landlord were nothing more than those that are incumbent upon a landlord to make in order to render the premises habitable, and that therefore any rent increase was subject to the rent review provisions of the Act in the usual fashion.

Appeal Commissioners Pollock and Thomson were in agreement that the landlord had in fact changed the basic character of the unit by converting it from a one bedroom to a three bedroom apartment. They therefore stated that "the landlord then had the opportunity and right in accordance with sections 4(6) and 14(1)(c) of The Residential Premises Rent Review Act, 1975 [in force at the time of the commencement of the tenancy] to set the first rent of the converted apartment. Subsequent increases would be subject to that Act and are now subject to The Residential Tenancies Act."

Appeal Commissioner Biggar dissented. He agreed with the landlord as did his two fellow Appeal Commissioners, that section 4(6) of The Residential Premises Rent Review Act may be interpreted as allowing a new rent to be set in cases where, through substantial changes, a new unit has been effectively created and is thus being rented in that form for the first time. In his opinion however, the renovations carried out by the landlord in this case consisted only of items of normal repair, pursuant to the landlord's obligation under The Landlord and Tenant Act to provide and maintain the rented premises in a good state of repair and fit for habitation. There was evidence that despite the landlord's allegation that the unit had only contained one habitable bedroom before renovations, the previous tenants had in fact occupied the entire second floor. Consequently, in Commissioner Biggar's view, renovations were not extensive enough to create a new unit, and the landlord should be limited to a six percent increase.

In the result, an order was issued setting aside the order of Commissioner Isaac and substituting a new order setting the rent for the unit at $400.00 and determining that the tenant had not paid any excess rents.

IN THE MATTER OF: "The Bournemouth"
45 Livingston Road
Scarborough, Ontario.

AND IN THE MATTER OF an application for rent review by Neville B. Cummings (Landlord)

APPEAL PANEL: W. D. Biggar, N. B. Doorenspleet and H. F. Snyder

DATE OF DECISION: March 10, 1980

FILE NUMBER: 126-SB-001

ISSUES: Standard of maintenance and repair - whether a landlord's profits derived from the operation of a residential complex should be reinvested to raise the standard of maintenance in the building

The landlord of this large multi-unit residential complex applied under section 126 of The Residential Tenancies Act for an order allowing him to increase the rents charged by more than the permitted maximum of six percent. After reviewing all of the evidence presented, Commissioner Timney found justification for certain rent increases and issued an order dated December 4, 1979, setting out the maximum monthly rents that could be charged.

Certain of the tenants appealed this order, submitting as one of their arguments that the landlord's profit in the operation of the building should be reinvested in the building by way of improvements and increased services.

The appeal panel considered the tenants' submissions in this regard and responded as follows:

> "The Act does not empower the Commission to direct the utilization of any profits which the landlord may derive in the operation of the residential complex; nor does it provide that consideration be given to a landlord's "Return on Investment" except to the extent provided for in section 131(3) of the Act [Relief of Hardship]. We therefore reject the arguments made by the appellants in this regard."

The panel then considered the remainder of the appellant's submissions and in the result, the order of Commissioner Timney was affirmed.

IN THE MATTER OF:	Main Square 255-265-275 Main Street and 2475 Danforth Avenue Toronto, Ontario.
BETWEEN:	Mrs. J. Fowler et al. (Tenants) - and - Victoria Wood Development Corporation (Landlord) - and - Canada Mortgage and Housing Corporation (Added Party)
COMMISSIONER:	Robert P. Grimson
DATE OF DECISION:	May 12, 1980
FILE NUMBER:	127-TO-145
ISSUES:	Exemptions - section 134(1)(a) of The Residential Tenancies Act - "owned, operated or administered by or on behalf of the Government of Canada"

Tenants of residential units situated in this residential and commercial complex applied to the Commission under section 127 of The Residential Tenancies Act for an order requiring the landlord to reduce the amount of the rent increase proposed.

It was established that the land on which the complex was located was owned by Canadian National Railways Company, a Crown corporation. In 1970, C.N.R. leased this land to Victoria Wood Development Corporation for a period of 75 years. Victoria Wood mortgaged the property to Central Mortgage and Housing Corporation, now Canada Mortgage and Housing Corporation, to finance construction, and on May 1, 1971 these two parties entered into a 50 year lease covering the residential portion of the complex. The effect of this lease was to make C.M.H.C. the operator of the residential complex, insofar as it was to pay taxes, utilities, and costs required to maintain the complex in a good state of repair. On July 27, 1972, C.M.H.C. entered into a management agreement with Victoria Wood

for a period of 50 years, also regarding the residential portion of the complex, the effect of which was to designate Victoria Wood as the agent of C.M.H.C. for renting and managing the property. This agreement also enumerated various duties that the agent was to undertake, including: leasing units on behalf of C.M.H.C. but in the agent's name, enforcing tenants' covenants, and keeping the premises in a good state of repair.

Counsel for C.M.H.C. requested that the Commissioner dismiss the tenants' application on the grounds that their units were exempt from rent review by operation of section 134(1)(a) of the Act. This section provides as follows: "a rental unit situate in a residential complex owned, operated or administered by or on behalf of the Government of Canada or Ontario or a municipality... "[is exempt]. In support of his contention that the subject complex fit within this exemption, counsel referred to section 5(1) of The Canada Mortgage and Housing Corporation Act, R.S.C. 1970, c. C-16 which states in part that: "[C.M.H.C.] is for all purposes an agent of Her Majesty in right of Canada...". It was therefore submitted that the subject complex was "owned, operated or administered by or on behalf of the Government of Canada" through its agent, C.M.H.C.

The tenants argued that it was Victoria Wood and not C.M.H.C. that was the "landlord" and as a private developer would not be subject to the aforementioned exemption. The tenants also pointed out that the landlord had kept rent increases within the limits imposed by rent review legislation in the past and that the Commissioner should therefore consider this action as part of a "pattern of activities" in applying section 93 of The Residential Tenancies Act, which provides that "Every decision of the Commission shall be upon the real merits and justice of the case", and that in determining same, the Commission "may have regard to the pattern of activities relating to the residential complex". The tenants maintained that this action on the part of the landlord was evidence that the landlord considered

itself to be subject to rent review legislation. Counsel for C.M.H.C. responded that his client's adherence to the legislation regarding rent increases was a matter of policy only, and could not be construed as an admission that it was subject to same.

After considering these submissions, the Commissioner decided that the issue of which party was in fact the "landlord" of the subject units was irrelevant in any case, since section 134(1)(a) creates an exemption with respect to the residential complex and not the landlord. Commissioner Grimson then determined that in this case, the exemption referred to did apply in that the complex was "owned, operated or administered by or on behalf of the Government of Canada." Consequently, an order was issued dismissing the application.

IN THE MATTER OF:	"Coventry Place" Meadowbrook Lane Windsor, Ontario

AND IN THE MATTER OF an application for rent review by Major Holdings and Developments Limited (Landlord)

APPEAL PANEL:	N. Myrhorod, P. Tatay, G. Isaac
DATE OF DECISION:	May 26, 1980
FILE NUMBER:	126-WN-008
ISSUES:	Operating costs - whether "bad debts" are a proper operating expense Amount of rent increase - whether must be geared to the national inflation rate

The landlord of this large residential complex applied under section 126 of The Residential Tenancies Act for an order allowing him to increase the rents charged by more than the permitted maximum of six percent. After reviewing all of the evidence presented, Commissioner Veitch found justification for certain rent increases and issued an order dated December 24, 1979, setting out the maximum monthly rents that could be charged.

Certain of the tenants appealed this order, stating as one of their reasons for so doing that the amount of rent increase granted was in excess of the inflation rate as published by Statistics Canada. They also submitted that it was unfair that tenants were forced to accept responsibility for "bad debts" uncollectible by the landlord.

The appeal panel considered these submissions and reviewed the landlord's position as well. The panel advised the appellants that the inflation rate as determined by Statistics Canada has no bearing on the amounts of rent increases that are found to be justified. Section 131 of The Residential Tenancies Act sets out the only considerations that must be made on such an application, and the inflation rate is not among them. Such considerations include operating costs, financing costs, capital expenditures and financial loss that the landlord experienced or will experience.

With respect to the appellants' arguments concerning bad debts, the panel informed them that such costs, when proven, are a proper operating expense, and that in this case the landlord had submitted adequate proof in the form of itemized audited statements.

In the result, the order of Commissioner Veitch dated December 24, 1979 was affirmed.

IN THE MATTER OF: 809 Nichols Street, Peterborough, Ontario.

AND IN THE MATTER OF an application for rent review by Paul Brown (Landlord)

COMMISSIONER: G. I. Mandel

DATE OF ORDER: May 27, 1980

FILE NUMBER: 126-PB-028

ISSUES: Financing costs - non-arm's length - treatment of mortgage payments where mortgagee is landlord's mother

The landlord of this five unit residential complex applied under section 126 of The Residential Tenancies Act for an order allowing him to increase the rents charged by more than the permitted maximum of six percent.

Evidence of increased costs was presented by the landlord in order to justify the proposed rent increase. The property had been recently acquired by the landlord at a cost of $68,066 and financed by way of two mortgages. The first mortgage was with Kawartha Credit Union Limited for a total of $50,000 at 12-1/2% interest per annum. The second mortgage was for $10,000 at 10% interest per annum in favour of the landlord's mother.

The landlord argued that the interest rate on the second mortgage was lower than the market rate for second mortgages, and should therefore be adjusted by the Commissioner to more accurately reflect market conditions. The Commissioner agreed that this was fair, recognizing that the landlord had only obtained these favourable mortgage terms as a consequence of his special relationship with the mortgagee.

The Commissioner considered that interest on a second mortgage at market rates would be approximately 1-1/2% higher than the interest being paid on the first mortgage to Kawartha Credit, and

accordingly allowed a notional interest rate of 14% to be used in performing calculations relating to the second mortgage. The full amount of the second mortgage did not enter into the calculations however, as the Commissioner would only consider financing costs to a maximum of 85% of the acquisition costs, in accordance with the approach suggested in the Interpretation Guideline dealing with financing costs (Guideline RR-2) as issued by the Board of Commissioners of the Residential Tenancy Commission. This Guideline suggests that all landlords should have a minimum of 15% equity in the complex under review.

The review was then completed and the justified rent increase calculated accordingly.

IN THE MATTER OF:	"Montebello Apartments" 14 Norris Place St. Catharines, Ontario

AND IN THE MATTER OF an application for rent review by John LaMothe (Landlord)

COMMISSIONER:	L. V. Wilton
DATE OF ORDER:	December 7, 1979
FILE NUMBER:	126-SC-001
ISSUES:	Financing costs - whether the inflated acquisition cost alleged to have been paid for complex by new landlord should be reduced to market value before determining any rent increase

The landlord of this forty unit residential complex applied under section 126 of The Residential Tenancies Act for an order allowing him to increase the rents charged by more than the permitted maximum of six percent.

The subject complex had been purchased by the landlord on August 1, 1979 at a total cost of $451,450.70. Counsel for the tenants submitted that this amount represented a poor bargain, since a recent transfer of this property on November 3, 1978 had taken place at a cost of only $345,000, a difference of $106,450. The tenants' solicitor argued that it would not be fair to the tenants to pass this inflated cost on to them in the form of rent increases.

The Commissioner agreed that this increase in price did seem excessive, but noted that there was no evidence to indicate that it was the result of a non-arm's length transaction. Consequently, he declined to accept the tenants' argument and included the actual acquisition cost in his calculations.

IN THE MATTER OF: 93 Northcliffe Boulevard
Toronto, Ontario.

AND IN THE MATTER OF an application for rent review by Mr. and Mrs. Mario Campea (Landlords)

APPEAL PANEL: W. D. Biggar, J. H. Thomson, K. J. Timney

DATE OF DECISION: June 25, 1980

FILE NUMBER: 126-TO-071

ISSUES: Service - section 98(1) of The Residential Tenancies Act - landlord shall promptly give copy of his application to the Commission to any tenant etc. - meaning of the word "promptly"

The landlord of this four unit residential complex applied under section 126 of The Residential Tenancies Act for an order allowing him to increase the rents charged by more than the permitted maximum of six percent. After reviewing all of the evidence presented, Commissioner Jennings found justification for certain rent increases and issued an order dated March 18, 1980, setting out the maximum monthly rents that could be charged.

Three tenants appealed this order, and were represented by counsel at the appeal hearing. The appellants requested that the order be set aside on the grounds that Commissioner Jennings had erred in assuming that he had jurisdiction to hear the landlord's application. The appellants contended that the landlord had failed to "promptly" give a copy of the application to each tenant as is required under section 98(1) of the Act, and had therefore prejudiced the tenants' position by not affording them sufficient time to prepare for the hearing.

It was established that the landlord's application was dated November 27, 1979 and received at the Commission's office on December 4, 1979. The appellants confirmed that they had received a copy of the landlord's application on or about the 5th day of February, 1980 and that they had received from the Commission on or about

February 1, 1980, the "Notice of Hearing" setting February 26, 1980 as the date for hearing and considering the landlord's application.

Counsel for the tenants referred the Commissioner to section 98(1) of the Act, which states:

> "where a landlord makes an application to the Commission, the landlord shall promptly give a copy of the application to any tenant, sub-tenant or occupant who at the time the application is made, is directly affected by the issues raised in the application".

It was submitted on behalf of the tenants that the word "promptly" as used in this section does not embrace a time period of two months, more or less, from the time that the landlord's application was filed to the time that the tenants received a copy of the application, as was the case here. It was therefore contended that since the requirements of this section were not met, the Commissioner did not have jurisdiction to consider the application. Counsel for the tenants also argued that this noncompliance with the legislation had prejudiced the tenants in presenting their case, since they had been afforded only twenty-one days to prepare their submissions.

The panel commented that any interpretation of the word "promptly" falls short of designating a specific time period and in this regard referred to Webster's New Collegiate Dictionary which defines this word as "being ready and quick to act as occasion demands". The panel therefore concluded that interpretation depended upon the surrounding circumstances. It then considered whether in fact the appellants had been prejudiced by the time lapse, and in this regard reference was made to section 126(4) of the Act, which provides that the landlord must file all the material on which he intends to rely in support of his application not later than fourteen days before the hearing. The panel concluded that "the legislators considered fourteen days as a reasonable and fair period of time for all respondent parties to prepare and present their cases", and that accordingly the twenty-one days afforded the tenants here was sufficient. Further, it was

noted that the subject complex contained only four units and the revenue and cost figures were not unduly complicated, so there was no real justification for a longer preparation time being required.

Finally, the panel referred to section 93(1) of the Act, which requires consideration of "the real merits and justice of the case", and concluded that to deny the landlords their right to make an application for rent review on the basis of a "perceived procedural error" would be unfair.

In the result, the order of Commissioner Jennings dated March 18, 1980, was affirmed.

IN THE MATTER OF:	700-730 Ontario Street Toronto, Ontario
BETWEEN:	Gloria Earle et al. (Tenants) - and - Barbara Apartments Limited (Landlord)
APPEAL PANEL:	W. D. Biggar, N. B. Doorenspleet, H. F. Snyder
DATE OF ORDER:	July 2, 1980
FILE NUMBER:	127-TO-019
ISSUES:	Procedure - time limits - when a Commissioner should exercise his discretion to extend under section 97 of The Residential Tenancies Act Standard of maintenance and repair on a tenant's application under section 127 - time period to be considered

Forty-eight tenants applied under section 127 of The Residential Tenancies Act for an order requiring the landlord to reduce the amount of an intended six percent increase in rents.

Forty of the applications were completed and dated before the sixty day time limit specified in section 127(3) of the Act, but were received after sixty days had elapsed. They were therefore "out of time" according to the section, but Commissioner Bentley decided to employ the discretion afforded him under section 97 of the Act, which states:

> "The Commissioner may, whether or not the time for making an application to, or filing a Notice of Appeal with, the Commission has expired and where it is of the opinion that it would not be unfair to do so, extend the time for the making of the application to, or the filing of the Notice of Appeal with, the Commission."

The landlord was of the opinion that it would be unfair to extend the time limit, especially in view of the fact that the tenants had been represented by Metro Tenants Legal Services and should therefore have been advised of time restraints, but the tenants argued that the extension should be made. They submitted that because this was a new Act, with new time periods and new forms, it was understandable that a mistake had been made and was therefore reasonable that the time be extended. The Commissioner considered all submissions, and in the result decided to allow an extension of time with respect to these applications, though noting that he was only doing so because the Act had just recently come into force and because Metro Tenants Legal Services had apparently not been involved with these applications at the time they were made.

It was argued on behalf of the tenants that the rent increase was not justified due to the decline that had taken place in the standard of maintenance and repair in the complex. At the hearing, tenants submitted as evidence of their allegations copies of work orders, photographs of exterior and common areas illustrating disrepair, a letter from the Department of Health concerning cockroach and mice infestation, and other material. The tenants also referred the Commissioner to the case of Re Quann et al. and Pajelle Investments Limited, (1975) 7 O.R. (2d) 769. The agent for the landlord argued that efforts had in fact been made to improve the standard, and submitted as evidence of this a list of work done supported by affidavits.

Section 132 of The Residential Tenancies Act states that in considering an application under section 127, the Commissioner may consider, among other matters, "an improvement or deterioration shown to have occurred in the standard of maintenance and repair that affects the rental unit" (emphasis added). The tenants were alleging disrepair with respect to the common and outside areas and not simply the units, and relied on Re Quann and Pajelle to support their proposition that a decline in maintenance with respect to areas outside the units was relevant as well. In Re Quann, it was noted that section 96(1) of The Landlord and Tenant Act imposes a continuing obligation on a landlord to maintain residential premises in a good state of repair.

Further, by application of section 10 of The Interpretation Act, which states that "Every act...shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the object of the Act according to its true meaning and spirit", the meaning of "residential premises" can be expanded (and indeed was so expanded in Re Quann) to include some common areas as well. Therefore, the tenants submitted that in this case, a decline in the standard of maintenance and repair in common and exterior areas was also relevant. The Commissioner accepted these submissions, referring in so doing to Interpretation Guideline RR-10 as issued by the Board of Commissioners of the Residential Tenancy Commission. This Guideline suggests that a singular problem far removed from the unit under consideration is not relevant to the question of a decline in this standard, but it was the opinion of the Commissioner here that a general decline in all exterior and common areas was properly worthy of consideration.

Commissioner Bentley then considered the evidence with regard to the state of disrepair existing in the complex, and was forced to conclude that while the standard of maintenance was unquestionably low, in fact it had always been low, so no "improvement or deterioration" as specified in section 132 had occurred. However, because the conditions in the building were actually substandard, the Commissioner determined that this situation should in some way be reflected in the rent increase. He therefore reviewed each application and determined the work that the landlord had done with regard to that unit. A one percent increase was then allowed for the corrections in the common and exterior areas and a further one percent for each work order performed. The Commissioner commented that "this acknowledges in some way that where maintenance has deteriorated to the extent that the landlord must eliminate substandard conditions by work orders issued by the city, the costs involved in doing the work are met by the revenue created by the increases granted."

The orders made by Commissioner Bentley setting rent increases at less than six percent were appealed by the landlord. The landlord argued firstly that the applications made outside the time limit of sixty days should not have been considered and secondly that there had been no deterioration in the standard of maintenance and repair and thus a six percent rent increase should not be interfered with.

On the issue of the timing of the applications, Commissioners Doorenspleet and Snyder concurred in the opinion that Commissioner Bentley had not erred in allowing the time limits to be extended.

They agreed that the transition in legislation was confusing for tenants, and that in any event the appellant bears the burden of proving initially that an extension would in fact be unfair, which had not been discharged here.

Both Appeal Commissioners also made some general comments concerning appeals on questions of procedure. They stated that:

> "...rulings made at the initial hearing concerning procedural matters should not be lightly interfered with by an Appeal Panel...There is only one situation in which we would be prepared to set aside a Commissioner's order on the basis of procedural rulings made by the Commissioner. This would occur if, in making the procedural ruling, the Commissioner failed to act judicially, for example, by acting in bad faith or considering irrelevant matters."

With respect to the issue of whether in fact a deterioration in the standard of maintenance and repair in the building had occurred, several points of interpretation were considered by these two Appeal Commissioners. They stated that to constitute "deterioration", there must be a "worsening or lowering of the condition", and that "If conditions have been deplorable previously and are still deplorable, then there has not been a deterioration". It was determined in this situation that although the standard was bad, this did not represent a worsening of a previous condition.

The tenants argued on the appeal that the comparison of the levels of maintenance should not be limited to a specific time period. The Commissioners noted that the Act is silent on this point, but that it would not be fair to take the comparison back to a period predating the introduction of Rent Review legislation. They commented as follows:

> "In the absence of statutory direction or a Commission Guideline, we have looked to the general nature of the time frame implicit in the Rent Review process set out in Part XI of the Act. The Act in many places in Part XI refers to a "twelve month" period, sections 124, 126(2), 128 and 134(3). Given the annualized nature of Rent Review and the Act references cited above, we are of the view that, in the absence of unusual circumstances, we should limit ourselves retrospectively to a period of twelve months. This is the period we have considered in this case."

Finally, the two concurring Appeal Commissioners considered the intent of section 132(1). It was their opinion that this section was not intended to be a legal means whereby a maximum standard of maintenance can be achieved. They commented that any complaints regarding repairs could be dealt with by the courts under the relevant provisions of The Landlord and Tenant Act, and that the City of Toronto could also be contacted with respect to enforcing any contravened health and safety by-laws.

In the result, Appeal Commissioners Doorenspleet and Snyder agreed that there were no grounds on which to deny the landlord a six percent increase.

Appeal Commissioner Biggar dissented with respect to his colleagues' position regarding time extensions on certain tenants' applications.

Commissioner Biggar was of the opinion that it would be reasonable for a Commissioner to exercise his discretion in extending a time limit where the reasons for the delay involved unavoidable absence, accident, illness, or other cause beyond the control of the applicant. However, it would not be reasonable to extend the time where the time deficiency is due to the applicant's own lack of action, without due cause, to ensure that the application is filed in accordance with the specific requirements of the Act. Commissioner Biggar maintained that an applicant "has a responsibility to keep himself informed as to the requirements of the Act and that any lack of knowledge in this regard does not represent valid cause for extension of time". Further, consideration of section 93(1) of the Act, which states that "every decision of the Commission shall be upon the real merits and justice of the case" is not generally appropriate in situations where the Act is absolutely specific in setting out a procedural requirement.

Finally, Commissioner Biggar commented that in this case, the Barbara Apartments Tenants Association has been involved with and well informed in rent review procedures over the past three years. Thus, it is reasonable to expect them to be prudent advisors in regard to tenants' rights and obligations, especially since the sixty day requirement for an application under section 127(3) of the Act is clearly noted on the application form.

In the result, all members of the Appeal Panel were agreed that the landlord's proposed rent increases of six percent were proper, and the order of Commissioner Bentley was set aside and a new order substituted accordingly.

IN THE MATTER OF: 321 Park Street, Kitchener, Ontario.

AND IN THE MATTER OF an application for rent review by Roger Roedding for Mervyn Villemaire in Trust (Landlord)

COMMISSIONER: N. B. Doorenspleet

DATE OF ORDER: December 28, 1979

FILE NUMBER: 126-KT-018

ISSUES: Capital expenditures - when projected costs will be considered

The landlord of this eleven unit residential complex applied under section 126 of The Residential Tenancies Act for an order allowing him to increase the rents charged by more than the permitted maximum of six percent.

The landlord argued that a higher increase was necessary in order to generate the extra funds needed to finance certain proposed capital expenditures. The applicant did not produce any contracts or commitments with respect to these expenditures however, and did not intend to make any arrangements in this regard until after a rent increase sufficient to cover the costs was granted. The Commissioner was not willing to include these projected costs without some proof that they would be incurred, but did comment that "a landlord must be encouraged to keep up proper maintenance" and in keeping with that opinion, allowed $400.00 out of the requested $800.00 to be taken into account for painting expenses.

IN THE MATTER OF: 1673 Talon Street
Val Therese, Ontario

AND IN THE MATTER OF an application for rent review by Dan Chmara representing the estate of Fred Chmara (Landlord)

COMMISSIONER: A. J. Durbacz

DATE OF ORDER: June 20, 1980

FILE NUMBER: 126-SD-061

ISSUES: Multi-year cost pass-through - no rent increase taken since 1974

The landlord of this single rental unit applied under section 126 of The Residential Tenancies Act for an order allowing him to increase the rent charged by more than the permitted maximum of six percent. It was established that the prior landlord, now deceased, had not increased the rent on the subject premises since 1974. The new landlord requested that the Commissioner give consideration to increased costs since that time when calculating the justified rent increase. This would necessitate a departure from the usual principle that cost increases be reflected only insofar as the previous one year is concerned. The Commissioner commented as follows:

> "I believe it to be the function of a proprieter to make a conscious decision each year to either increase rent or leave it where it is. The prior landlord had chosen to leave the rent where it was. However, it is logical to assume that an eighty-three year old man will be in no hurry to change things from the status quo. Therefore, I feel it would be fair to look at the changes in costs for a greater interval than the normal one year pass-through but not as great an interval as requested. Accordingly, I have decided to allow the change from 1978 to 1980, a two year interval."

The review was then completed and the justified rent increase calculated accordingly.

IN THE MATTER OF:	Unit 4 340 Traynor Avenue Kitchener, Ontario
BETWEEN:	Dwain White (Tenant) - and - 422258 Ontario Limited (Landlord)
COMMISSIONER:	N. B. Doorenspleet
DATE:	June 26, 1980
FILE NUMBER:	127-KT-020
ISSUES:	Amount of rent increase - "Reduced rent" charged for term of lease pending renovations to complex - whether increase now restricted to 6% of reduced amount only.

The tenant applied to the Commission under section 127 of The Residential Tenancies Act for an order requiring the landlord to reduce the amount of the proposed rent increase.

It became evident at the hearing that a dispute had arisen between the landlord and the tenant concerning the actual amount of the rent being charged for the subject unit on which a six percent increase was to be taken. It was established that the parties had entered into a written tenancy agreement at the commencement of the one year term of the tenancy, and that the said agreement contained a clause which provided as follows:

> "the landlord and tenant mutually agree that the base gross rent on this unit has been reduced from $278 to $260 for the term of this lease agreement only, because of the current complex conditions and repairs".

The tenant accordingly paid rent in the amount of $260.00 per month for the term of the agreement, such term ending on July 31, 1980. The landlord maintained that the basic rent on which a six percent increase could then be charged was in fact $278.00 per month.

The tenant maintained that the base rent was in fact the lower amount of $260.00 and that six percent of that amount would represent the allowable increase.

The Commissioner reviewed the evidence and concluded that the terms of the tenancy agreement were clear and binding in providing for a monthly rent of $260.00 for the fixed period of the agreement. The landlord was therefore entitled to an increase of six percent on that amount as the last lawfully charged basic rent, subject to his right to make an application for rent review under section 126 of the Act.

As the tenant had no objection otherwise to a six percent increase, the rent was accordingly set at $276.00 per month ($260 + 6%).

IN THE MATTER OF:	959 Victoria Avenue Windsor, Ontario
BETWEEN:	Mrs. Grace Gorrell (Tenant) - and - Mrs. Ute Wigley (Landlord)
APPEAL PANEL:	D. W. Biggar, K. J. Timney, G. E. Isaac
DATE OF ORDER:	April 21, 1980
FILE NUMBER:	129-WN-001
ISSUES:	Illegal rent increases - whether section 138 of The Residential Tenancies Act prohibits the application of section 129 of the Act with respect to illegal rent increases which occurred prior to December 1, 1979

The tenant applied to the Commission under section 129 of The Residential Tenancies Act for an order that the landlord refund excess rents paid, and for a declaration of the rent that could lawfully be charged. Commissioner Veitch reviewed the evidence submitted and issued an order dated December 17, 1979 directing the landlord to refund all excess rents paid by the tenant for the period June 1, 1979 to October 31, 1979.

The landlord appealed this order on the grounds that The Residential Tenancies Act, under which the tenant's application was made, was not in effect at the time the disputed rent increase occurred, and thus could not be relied upon. Further, it was argued that section 138 of the Act [which provides that the rent review provisions of the Act apply only to applications made in respect of rent increases intended to take effect on and after the 1st day of December 1979] prohibits the application of section 129 with respect to rent increases which occurred prior to December 1, 1979. Commissioner Veitch had expressed the opinion at the initial hearing that the reference to rent increases made in section 138 was with respect only to landlords' applications for rent increases under section 126, and not tenants' applications under section 129.

It was the opinion of the appeal panel, after considering submissions made by the parties concerning the applicability of The Residential Tenancies Act, that section 129 of the Act permits applications by tenants for rebates of excess rents paid regardless of which statute (i.e. either The Residential Premises Rent Review Act or The Residential Tenancies Act) was in force at the time the payments were made.

Further, with respect to the landlord's arguments concerning section 138 of the Act, the panel commented as follows:

> "We are of the opinion that the interpretation placed on section 138 by the Appellant was not that intended by the Legislature. Otherwise, it would render that part of section 129 which refers to The Residential Premises Rent Review Act meaningless. Clearly by referring specifically to this Act, the Legislature intended section 129 to permit the Commission to order landlords to pay excess rents for the period prior to December 1, 1979 to tenants."

In the result, the order of Commissioner Veitch was affirmed.

IN THE MATTER OF: 14-16 Westdale Drive
Welland, Ontario.

AND IN THE MATTER OF an application for rent review by Royal Court Properties Limited (Landlord)

COMMISSIONER: L. V. Wilton

DATE OF ORDER: February 8, 1980

FILE NUMBER: 126-SC-008

ISSUES: Notice of rent increase - whether serving on tenants a notice specifying a certain rent increase precludes the landlord from proposing a higher increase at the hearing

The landlord of this multi-unit residential complex applied under section 126 of The Residential Tenancies Act for an order allowing it to increase the rents charged by more than the permitted maximum of six percent. After examining the material submitted by the landlord and reviewing the evidence tendered by the parties, the Commissioner arrived at the amount of the total justified rent increase and, based on the landlord's submitted schedule of rents, computed the new rents payable.

It was brought to the Commissioner's attention at the hearing that tenants of certain of the subject rental units had received notices of rent increase for lesser amounts than those proposed by the landlord in its submitted rent schedule. Since the new maximum rents had been calculated based on the landlord's schedule, they included the higher amount. The Commissioner therefore pointed out to the affected tenants that as a result of this discrepancy, they were only required to pay the amount requested in the notices of rent increase, and not the new maximum amount as set out in this Order.

IN THE MATTER OF:	3-5 Wilberton Road Toronto, Ontario

AND IN THE MATTER OF an application for rent review by Gerald Morris (Landlord)

COMMISSIONER:	Harold M. Little
DATE OF ORDER:	June 11, 1980
FILE NUMBER:	126-TO-106
ISSUES:	Multi-year cost pass-through - no rent increase taken since 1975

The landlord of this two unit residential complex applied under section 126 of The Residential Tenancies Act for an order allowing him to increase the rents charged by more than the permitted maximum of six percent.

Since the rent on the upper unit had not been increased since 1975, the landlord suggested that all costs incurred since that time be taken into account in computing the justified rent increase. The Commissioner stated that while this request was reasonable, he must also consider the position of the tenant and in this regard commented that the landlord could have made use of the relevant provisions of The Residential Premises Rent Review Act and applied for rent increases as they became justified, thereby lessening the financial impact on the tenant. The Commissioner finally determined that the fairest approach would be to average the annual applicable costs for the years 1976 through 1979, and allow the difference between that average and the costs found for 1980, the projected year, as the figure representing increased costs for use in calculating the justified rent increase.

The review was then completed and the justified rent increase determined accordingly.

IN THE MATTER OF:	61 Williams Street South Porcupine, Ontario
BETWEEN:	Shawn Connors (Tenant) - and - Eero Sekki (Landlord)
COMMISSIONER:	Glenn R. Tait
DATE OF DECISION:	May 7, 1980
FILE NUMBER:	129-TM-072
ISSUES:	Exemptions - section 134(1)(c) of The Residential Tenancies Act - tenancy agreement made before but occupation took place after January 1, 1976 - whether unit is exempt

The tenant applied under section 129 of The Residential Tenancies Act for an order that the landlord refund rents paid in excess of those permitted under Part XI of the Act, and for a declaration of the rent that could lawfully be charged.

It was established at the hearing that the landlord had occupied the subject unit, a single family dwelling, until September of 1976, and that the unit had never been rented prior to that date. Section 134(1)(c) of the Act exempts from the rent review provisions included therein "a rental unit situate in a building, no part of which was occupied as a rental unit before the 1st day of January, 1976". The tenant contended that the unit should not be exempt, due to the fact that rental arrangements regarding the premises had been made prior to January 1, 1976. The Commissioner however pointed out that section 134(1)(c) specifically requires occupation of the premises before this date, and since no such occupation by the tenant took place here, the unit was clearly exempt from rent review. The tenant's application was dismissed accordingly.

Residential Tenancy Commission

Summaries of Significant Decisions

1981 2 R.T.C.

RESIDENTIAL TENANCY COMMISSION

SUMMARIES OF SIGNIFICANT DECISIONS - VOLUME 2

CITED (1981), 2 R.T.C.

This volume contains summaries of significant decisions and reasons given. If reference to the original full order and reasons is desired, contact the head office of the Residential Tenancy Commission at 77 Bloor Street West, 3rd Floor, Toronto, Ontario.

Published pursuant to the Residential Tenancies Act, R.S.O. 1980, c. 452, s. 81

Additional copies available through
Publication Services Mail Order,
880 Bay Street, 5th Floor,
Toronto, Ontario.
M7A 1N8.

or at the Ontario Government Book Store

This represents the second in a series of volumes of Summaries of Significant Decisions of the Commission. Cases selected for publication include decisions made by individual Commissioners at initial hearings, as well as decisions made by Appeal Panels of the Commission at appeal hearings. Cases summarized herein are based on decisions made by the Commission during the period from August 1, 1980 to July 31, 1981.

THE RESIDENTIAL TENANCY COMMISSION

CHIEF TENANCY COMMISSIONER
AND CHAIRMAN OF THE BOARD: P.C. Williams

MEMBERS OF THE BOARD
OF COMMISSIONERS:

D.A. Dukelow	E.J. Pollock
S.V. Fram	H.F. Snyder
G.E. Isaac	J.H. Thomson

APPEAL COMMISSIONERS:

W.D. Biggar	N.L. Myrhorod
J.F. Bordeleau	P.P. Tatay
N.B. Doorenspleet	K.J. Timney
M.S. Green	

COMMISSIONERS:

R.S. Bentley	S.L. Marshall
A.J. Durbacz	D.H. Niblock
R.P. Grimson	L.W. Preston
C.E. Harrott	A.D. Sandeman
D.L. Heller	J. Sawchyn
J.B. Jennings	G.R. Tait
H.M. Little	J.B. Veitch
P.A. Loftus	L.V. Wilton
D.C. MacDonald	R.C. Yurkoski
G.I. Mandel	

SENIOR LEGAL COUNSEL: A.A. Hermant, Q.C.

77 Bloor Street West
3rd Floor
Toronto, Ontario
M5S 1M2

Summaries of Decisions
Volume 2

TABLE OF CONTENTS

Page

Re 161 Ahrens Street West, Kitchener
File Number 126-KT-073

Financing costs - treatment of non-arm's length lease-back arrangement 1

Re Bellevue Mobile and Motor Homes Limited, R.R. #2, Orleans
File Number 126-OT-177

Procedure - treatment of rent review application where appeal of prior order to the Supreme Court of Ontario is pending 4

Re 1942-1954 Bloor Street West, Toronto
File Number 126-TO-353

Section 128 of the Residential Tenancies Act - application where extensive renovations made in complex 5

Re 75 Bold Street, Hamilton
File Number 126-HM-175

Jurisdiction - sub-s. 84(3) of the Residential Tenancies Act - Section 131 of the Act - interpretation 7

Re 279 Chandler Drive, Kitchener
File Number 126-KT-212

Exemptions - section 134(1)(c) Residential Tenancies Act - conversion from condominium units to rental units 10

Re Cooper's Mobile Village, R. R. #7, Peterborough
File Number 127-PB-027 to 048

Deterioration in the standard of maintenance and repair - considerations 12

Re Lower Duplex, 5 Cottingham Road, Toronto
File Number 129-TO-249

Shift of responsibility for payment of hydro - effect on rents 14

Re 25 Davisville Avenue, Toronto
File Number 126-TO-273

Section 128 of the Residential Tenancies Act - application where extensive renovations made in complex 16

Page

Re King Towers, 3434 Eglinton Ave. East, Scarborough
File Number 126-SB-012

Withdrawal of an application - considerations made in granting consent thereto 19

Re 603, 605, 609, 617 and 621 8th Ave. South, Kenora
File Number 127-KN-010

Exemptions - sub-s. 134(1)(a) of the Residential Tenancies Act - "owned, operated or administered by or on behalf of the Government of Canada" 22

Re 6 Forest Laneway, Willowdale
File Number 126-NY-082

Procedure - admissible evidence at hearing 25

Re Halam Park Development Limited, Shadyside and Halam Avenues, 25th and 27th Street, Hamilton
File Number 126-HM-015

Exemptions - sub-s. 134(1)(a) of the Residential Tenancies Act - "owned, operated or administered by or on behalf of the Government of Canada"

Constitutional law - doctrine of paramountcy - the Residential Tenancies Act and the National Housing Act (Canada) 27

Re Apartment 1, 17 Herkimer Street, Hamilton
File Number 129-HM-139

Renovations - whether renovations undertaken by landlords were were sufficient to create a "new unit" on which a new rent could be set - section 4(6) of the Residential Premises Rent Review Act 30

Re 148-152 Hilton Avenue, Toronto
File Number 126-TO-332

Apportionment of rent increases - equalization - considerations 34

Re 378 Huron Street, Toronto
File Number 129-TO-240

Application of section 128 of the Residential Tenancies Act where a residential complex has been renovated

Application of Guidelines RR-8 and RR-9 - determining rent overcharges 35

Page

Re Apartment #2207, 44 Jackes Avenue, Toronto
File Number [illegible]-TO-227

Section 127 of the Residential Tenancies Act - considerations to be made on an application under this section 39

Re Suite 604, 825 Kennedy Road, Scarborough
File Number 126-SB-681

Exemptions - whether Part XI of the Residential Tenancies Act applies to a condominium unit in a building which existed as rental accommodation prior to 1976 41

Re 3969 Kingston Road Apartments, 3969 Kingston Road, Scarborough
File Number 126-SB-631

Operating costs - whether advertising costs can be considered as a separate expense - whether reasonableness of costs must be considered

Standard of maintenance and repair - whether landlord can be ordered to improve standard 42

Re 2845 Kipling Avenue, Rexdale, Ontario
File Number 126-ET-643

Treatment of landlord's costs incurred in preparing for rent review

Service of copy of landlord's application - whether landlord's failure to do so will deprive the Commission of jurisdiction

Notice of Rent Increase - whether propriety of notice will be considered on an application for rent review 44

Re 1440-1442 Lawrence Avenue West, Toronto
File Number 126-NY-129

Cost correction - adjustment of fiscal periods 47

Re 1770 Paris Street, Sudbury
File Number 126-SD-652

Operating costs - expenses incurred when work contracted for not completed

Legal costs - treatment of landlord's legal costs incurred in preparation for hearing 49

Re 415 Parkside Drive, Toronto
File Number 126-TO-249

Acquisition costs - valuation - transfer of property between spouses 51

Page

Re Royal Oak Apartments, 2401 Queen Street East, Toronto
File Number 126-TO-360

Financing costs - whether the Commissioner has the discretion to limit amount of such costs that will be considered

Financial loss - whether the Commissioner has the discretion to spread the loss over a three-year period 53

Re 33 Robinson Street, Hamilton
File Number 126-HM-121

Shift in responsibility for payment of cable television fee - effect on rents 56

Re Upper Unit, 167 Scrauren Avenue, Toronto
File Number 127-TO-260

Exemptions - section 134(1)(c) of the Residential Tenancies Act - no occupation before January 1, 1976 58

Re 109-111 Spadina Road West, Kitchener
File Number 126-KT-138

Adjustment of review period for cost correction 60

Re 75 Spencer Avenue, Toronto
File Number 126-TO-244

Operating costs - factors considered in determining whether an operating cost was properly allowed and reasonably considered 62

Re 30 Springhurst Avenue, Apartment 804, Toronto
File Number 129-TO-344

Excess rents - whether rent increases paid in response to improper notices of rent increase can be ordered refunded on an application under section 129 64

Re 7 St. Dennis Drive, Penthouse #8, Don Mills
File Number 127-NY-093

Separate charge for air-conditioner - whether imposition of such a charge constitutes a rent increase 66

Page

Re Unit #704, 10 Sunny Glenway, Don Mills, Ontario
File Number 126-NY-079

Exemptions - section 134(1)(e) of the Residential Tenancies Act - whether a condominium unit is exempt from rent review when part of the building in which it is situate was occupied as a rental unit prior to 1976 68

Re 16-20 Torrington Place, Ottawa
File Number 126-OT-127

Financing costs - non-arm's length - treatment of mortgage payments where mortgagee is landlord's father and increase in interest payment voluntary 70

Re Astoria Towers, 2240 Weston Road, Weston
File Number 126-ET-409

Landlord - definition - Receiver Manager

Notices of rent increase - whether errors therein will affect a landlord's application for rent review 71

Re 1760 Wilson Avenue, North York
File Number 126-NY-064

Financing costs - landlord gave mortgage to former partner in return for release of that partner's interest in the interest in the complex - whether these mortgage payments should be treated as an increased financing cost 74

Re Riverside Gardens, 671 Woolwich Street, Guelph
File Number 126-KT-287

No rent increases taken in previous years even though justified - whether this should contribute to a larger increase on this application 76

IN THE MATTER OF: 161 Ahrens Street West
Kitchener, Ontario

AND IN THE MATTER OF an application for rent review by W. Vollweiter (Landlord)

APPEAL PANEL: N. Myrhorod, D. Biggar, J. Thomson

DATE OF DECISION: September 18, 1980

FILE NUMBER: 126-KT-073

ISSUES: Financing costs - treatment of non-arm's length lease-back arrangement.

The landlord of this 17-unit residential complex applied under section 126 of the Residential Tenancies Act for an order allowing him to increase the rents charged by more than the permitted maximum of six percent. Evidence of increased costs was presented at the original hearing in order to justify proposed rent increases. With respect to financing costs, the landlord submitted proof of annual payments made to his parents as lessors of the subject property. There was no mortgage debt in existence, rather the landlord had effected a sale of the property to his parents and then leased it back from them at a cost of $11,670 per annum. Immediately prior to this application, the lease had been renewed and the terms altered so as to provide for an annual payment to the lessors of $23,380. The landlord submitted that this difference of $11,710 was an increased financing cost which the Commissioner should include in his calculation of the justified rent increase.

Commissioner MacDonald considered section 93 of the Act which states that every decision of the Commission "shall be upon the real merits and justice of the case" and that in determining same, the Commission "shall ascertain the real substance of all transactions and activities relating to the residential complex and the good faith of the participants...". He then referred to the Interpretation Guideline dealing with financing costs [Guideline RR-2] as issued by the Board of Commissioners,

which suggests that where a non-arm's length financing arrangement exists, careful scrutiny is necessary to ensure that it has not resulted in inflated costs.

The Commissioner decided to treat the payments under the lease as he would a mortgage debt on an acquisition of property, and include financing cost increases only to the extent necessary to prevent a financial loss by the landlord. Commissioner MacDonald stated that while he did not consider the amounts paid by the landlord under the lease to be inflated, he was not willing to allow the increased costs under the renewed lease to be reflected in his calculations. Unlike a renegotiated mortgage, where there would presumably be increased principal to invest in the building and thus a benefit to be conferred upon the tenants, this renegotiated lease did not yield any additional funding, and so it was deemed appropriate by the Commissioner to consider only the original figure of $11,670 in his calculation of financial loss.

Finally, Commissioner MacDonald commented that there was no obligation on him to adjust the leaseback costs to reflect market value other than where it had been determined that they were inflated, and so rejected the landlord's request that these costs be brought up to reflect market rates.

The landlord and twelve of the tenants appealed this order on various grounds. The tenants contended that the applicant was not the landlord of the complex at the time the application for an increase in rent was made, and that the Commissioner had therefore been without jurisdiction to consider the matter. It was established that at the time the application was made, there was no written agreement between the owners of the property and the applicant with respect to his status as landlord. However, the applicant argued that there had existed a verbal agreement to this effect and that further he had performed all of the duties of a landlord, a point that was not disputed by the tenants. The panel concluded from the evidence that the applicant was in fact the landlord and the application was deemed proper.

One of the grounds of appeal advanced by the landlord concerned Commissioner MacDonald's treatment of financing costs. The landlord pointed out that the higher leasing costs were not due to increased capital

funding but were a result of an increase in the interest rate from 6% to 14-1/2%, which was more in keeping with the market rate. The landlord therefore maintained that since this amount did not exceed market value, there was no reason for the Commissioner to disallow the increased costs associated with it.

The panel refused to accede to this argument, commenting that "There is no provision for the Commissioner to consider payments based on market value which was unattained, as in this case the property is still in the title of the original owner". The panel remarked that the Commissioner had no jurisdiction to consider what a fair return on investment should be to the lessor.

The panel then went on to consider the remainder of the arguments offered and in the result, the order of Commissioner MacDonald was affirmed.

IN THE MATTER OF: Bellevue Mobile and Motor Homes Limited
R.R. 2, Orleans, Ontario

AND IN THE MATTER OF an application for rent review by Bellevue Mobile and Motor Homes Limited (Landlord)

COMMISSIONER: D. H. Niblock

DATE OF ORDER: July 3, 1981

FILE NUMBER: 128-OT-177

ISSUES: Procedure - treatment of rent review application where appeal of prior order to the Supreme Court of Ontario is pending.

The landlord of this mobile home park applied under section 126 of the Residential Tenancies Act for an order permitting it to increase the rents charged by more than the permitted maximum of six percent. The landlord had appealed to the Supreme Court of Ontario from the Commission's last order issued on December 17th, 1980. As the Court had not yet heard the matter there was a question as to whether the Commission should proceed with the current rent review because the current rents remained in doubt.

There were concerns that further financial strain might result for both tenants and landlord if rents were not immediately determined. In addition, it was indicated on behalf of the landlord that legal guidance was still being sought and there was some doubt as to whether the appeal would be proceeded with.

After due consideration, the Commissioner decided to proceed with the current application. It was noted that in the event that a subsequent Court decision necessitated some adjustments, the Commission could exercise its authority under the Act to extend the time for launching an appeal to an appeal panel of the Commission. In view of this option and the fact that continued Court action was not a certainty, the hearing was proceeded with and an order ultimately issued setting the new maximum rents.

IN THE MATTER OF: 1942-1954 Bloor Street West
Toronto, Ontario

AND IN THE MATTER OF an Application for rent review by Canadian Opportunities Investments Limited (Landlord)

COMMISSIONER: P. Tatay

DATE OF DECISION: July 23, 1981

FILE NUMBER: 126-TO-353

ISSUES: Section 128 of the Residential Tenancies Act - application where extensive renovations made in complex.

An application was made under section 126 of the Residential Tenancies Act in regard to a 32-unit residential complex to consider the establishment of rents to be charged. As the building had become vacant and extensive renovations were underway, the main issue was whether section 128 of the Act applied.

The Commissioner found that renovations amounting to approximately $18,000 per unit were underway. This represented a significant increase in value over the $19,000 per unit value at which the building had been purchased in July, 1980.

The renovations were substantially completed at the time of the hearing. They involved repairs/renovations to all horizontal and vertical surfaces, windows, carpeting, plumbing, landscaping, sandblasting, enclosing a balcony, changing room divisions in a few cases, and the addition of bathrooms and closets in some instances. Floor areas were changed in some rooms and changes to electrical fixtures, counters, etc. occurred.

The units were effectively converted to new luxury rental units. The costs incurred including lost revenue during renovations would exceed or equal the original purchase price.

The Commissioner found that where renovations are involved Guideline RR-9 was proper to consider as it relates to section 128 of the Act. The Commissioner determined that many of the elements required to establish the creation of new rental units were found to exist. He therefore found that the landlord was entitled to set rents comparable to the average rents charged for similar rental units in the residential complex in accordance with section 128. He decided that the 32 rental units as renovated had not been previously rented and that the first rent charged should not be subject to the 6% limitation in section 125 as there was no relevant "last rent...charged" as referred to in that section.

IN THE MATTER OF: 75 Bold Street
Hamilton, Ontario

AND IN THE MATTER OF an application for rent review by Mutual Life Assurance Company of Canada (Landlord)

APPEAL PANEL: J. Thomson, N. Doorenspleet, D. Biggar

DATE OF ORDER: June 22, 1981

FILE NUMBER: 126-HM-175

ISSUES: Jurisdiction - sub-s. 84(3) of the Residential Tenancies Act

Section 131 of the Act - interpretation.

The landlord of this multi-unit high-rise residential complex applied under section 126 of the Residential Tenancies Act for an order allowing it to increase the rents charged by more than the permitted maximum of six percent. An order was issued by Commissioner Sandeman which set maximum permitted rents for all subject units in the complex.

Appeals were then filed by the landlord and by an agent on behalf of a number of the tenants.

The tenants' representative made a motion at the outset of the appeal that challenged the jurisdiction of the Commission to hold a hearing on the ground that subsection 3 of section 84 of the Residential Tenanices Act provided for a monetary limit of $3,000 beyond which no order for payment could be made by a Commissioner.

The subsection reads:

> **Subsection 84(3) - The Commission shall not make an order for the payment of money where the amount claimed by any party to the application is in excess of $3,000....**

The appeal panel found that this subsection was not applicable in this case. The Commission does not make an order for the payment of money where a rent review application is dealt with. The Commission determines

the total rent increase that is justified by its findings in accordance with section 131 of the Act. As a result of these findings an order is made setting the maximum amount of rent that may be charged by a landlord for each rental unit in the residential complex.

Consequently the tenants' motion was dismissed. The tenants' appeal was also found to be received out of time. Furthermore, the agent did not have an agency authorization to act on behalf of any tenant and the panel therefore did not feel that an extension of time was appropriate.

The landlord's appeal essentially challenged the treatment of capital expenditures and raised questions concerning the application and meaning of section 131 of the Residential Tenancies Act.

In considering the wording of section 131 the appeal panel decided that the word "findings" meant conclusions arrived at after thorough examination of the evidence within the context and intent of the provisions set out in the Act. The word "findings" also implies the discretion of the Commissioner to determine which amount is fair and reasonable to include in the determination of a justifed rent increase. Under section 131(1)(a) the Commissioner must review the cost of capital expenditures but there is no specification of a particular type of treatment nor any limitation of any specific period of time during which capital expenditures are to be considered.

An expenditure that is non-recurring in nature, i.e. not a normal operating cost, may be treated as a capital expenditure in a rent review. Such an expenditure will confer a benefit on the property over a number of years and its recovery in the form of increased rent should normally be extended over the expected lifetime of the expenditure.

The panel also reasoned that in dealing with capital expenditures interest could be allowed on the funds so expended so as to cover either actual interest charged on borrowed funds used for the expenditure or to provide an allowance as an opportunity cost where a landlord commits his own funds. An appropriate deemed interest rate must be used bearing in mind both current relevant rates and the period of cost recovery involved.

The panel disagreed with the way Commissioner Sandeman had used his discretion in dealing with capital expenditures. Commissioner Sandeman had allowed only the difference between the cost of new appliances and the estimated cost of the original old appliances to be taken into account when he established the amount of the landlord's capital expenditures for stoves and refrigerators. The members of the panel felt that the full cost of current capital expenditures as incurred should be allowed as a cost-pass-through in order to encourage capital replacements and repairs in a controlled rental market and retain standards at a desirable level.

The panel therefore adjusted the figures for capital expenditures to account for the full costs incurred. At the same time they adjusted the applicable interest costs concluding that on balance a 14% rate was reasonable and fair in regard to all allowances for capital expenditures incurred in 1980 and 1981. This rate was lower than the rates which Commissioner Sandeman had applied to the 1981 expenditures.

After dealing with the remaining issues raised by the landlord and adjusting the interest allowance the net result as determined by the order of the appeal panel was a small increase in maximum permitted rents.

IN THE MATTER OF: 279 Chandler Drive
Kitchener, Ontario

AND IN THE MATTER OF an application for rent review by Kupferberg Canada Limited (Landlord)

APPEAL PANEL: J. Pollock, J. Thomson and H. Snyder

DATE OF DECISION: September 16, 1981

FILE NUMBER: 126-KT-212

ISSUES: Exemptions - section 134(1)(c) Residential Tenancies Act - conversion from condominium units to rental units.

The landlord of this 66-unit condominium apartment building applied under section 126 of the Residential Tenancies Act for an order allowing him to increase the rents charged by more than the permitted maximum of six percent. The landlord also sought an alternative determination under subsection 84(3) of the Act that the premises were exempt from rent review.

It was established at the initial hearing before Commissioner Doorenspleet that the building initially had been registered as a condominium and a number of condominium units had been sold. The former owner had been unable to sell all the condominium units in the building however, and subsequently repurchased those units that had been sold earlier and then rented out all units as ordinary rental apartments.

The tenants who rented the former condominium units from the landlord all moved in during or after 1976. All those who occupied units prior to 1976 had been original purchasers of condominium units who had occupied their units as owners. Those owner-occupants made purchase deposits in accordance with agreements of purchase and sale in compliance with the Condominium Act. The original purchasers became tenants after 1976 when their units were repurchased by the former owner. The landlord argued that the occupants who were purchasers before 1976 should not be considered as having been tenants before 1976, but rather they should be considered as owners at that time.

The affidavit of a former owner attested to the circumstances and a check of the Registry Office and assessment records found no evidence to contradict the owner's evidence or to establish the existence of tenancies prior to 1976.

Commissioner Doorenspleet therefore accepted the landlord's evidence that the premises had not been occupied as rental accommodation prior to 1976, and found the complex to be exempt from rent review under section 134(1)(c) of the act. This section creates an exemption for:

> "a rental unit situate in a building, no part of which was occupied as a rental unit before the first day of January 1976;"

The application for rent review was dismissed accordingly, and a decision issued on June 10, 1981 determining that the premises were exempt from rent review.

Subsequently, Wanda L. McClure, a tenant in unit 308, appealed the decision of Commissioner Doorenspleet. She produced some evidence to suggest that a rental unit had been rented prior to 1976 to a student. However, the evidence could not be related to any specific rental unit. It did not identify a particular landlord and consisted of an unsworn document addressed "To whom it may concern". The author did not appear as a witness.

The members of the appeal panel were not prepared to overturn the decision of Commissioner Doorenspleet on the basis of this evidence. The panel considered the meaning of section 134(1)(c) of the Residential Tenancies Act and rejected a literal interpretation which might cause an entire condominium building to be subject to rent review if only one unit contained a tenant prior to 1976. They felt that even had there been proper proof of a tenancy in one particular rental unit then only that unit would be subject to rent review in these circumstances.

The panel therefore dismissed the appeal and affirmed the decision of Commissioner Doorenspleet.

IN THE MATTER OF:	Cooper's Mobile Village R.R. #7, Peterborough, Ontario
BETWEEN:	Dan and Sue Hefferman, et al. (Tenants) - and - Roy Cooper (Landlord)
COMMISSIONER:	G. Mandel
DATE OF ORDER:	June 25, 1981
FILE NUMBER:	127-PB-027 to 048
ISSUES:	Deterioration in the standard of maintenance and repair - considerations.

Nineteen applications by tenants of a mobile home park containing at least 22 sites for mobile homes were made under section 127 of the Residential Tenancies Act for an order requiring the landlord to reduce the amount of the rent increase proposed. The application was based on an alleged deterioration in the standard of maintenance and repair of sites in the mobile home park.

Evidence was given concerning the septic tank and drainage system in the park and the deterioration of the system over the past 18 months.

The landlord argued that swampy conditions near the park contributed to the drainage problems and that deterioration of the system was ongoing since its installation in 1965.

The tenants' evidence showed that deterioration of maintenance and repair had affected their sites. There were examples to show that further deterioration had occurred in the condition of the drainage system during the past one and one-half years.

The Commissioner was satisfied that a reduction in the proposed rent increase sought by the landlord was justified. The potential health hazard and loss of use and enjoyment of the mobile home sites was also considered. While an evaluation of the amount of the rent increase which

should be allowed was difficult the Commissioner decided to reduce the amount of the proposed increase to $2.00 per unit. An order was therefore issued setting out the maximum monthly rents that could be charged.

IN THE MATTER OF:	Lower Duplex 5 Cottingham Road Toronto, Ontario
BETWEEN:	Peter F. Coulter (Tenant) - and - Andrew Cheblus (Landlord)
APPEAL PANEL:	H. Snyder, W. Biggar, M. Green
DATE OF ORDER:	July 22, 1981
FILE NUMBER:	129-TO-249
ISSUES:	Shift of responsibility for payment of hydro - effect on rents.

The tenant applied under section 129 of the Residential Tenancies Act for an order that the landlord refund excess rents paid, and for a declaration of the rent that could lawfully be charged.

On January 1st, 1978 the landlord had raised the monthly rent by $30 from $450 to $480. On January 1st, 1979 the tenant was asked to pay his own hydro costs. On June 1st, 1979, the rent was increased to $525 per month.

After the lease ended on August 31st, 1979, the tenant received a "final bill" for hydro of $149.99 with a reading date of October 1st, 1979. The tenant refused to pay the hydro bill on the grounds that it was the landlord's responsibility.

The rent increases in question fell under the Residential Premises Rent Review Act, 1975 which was in effect prior to December 1st, 1979. The permissible rent increase was 6%, (set by an Order-in-Council, O. Reg. 790/772 on October 27th, 1977), which did not differ from the current rental increase guideline. The landlord was also prevented by section 5(2) of that Act from taking more than one rent increase per year, a provision which is now contained in section 124 of the Residential Tenancies Act.

The definition of rent in section 1(l)(h) of the Residential Premises Rent Review Act, 1975 indicated that hydro costs separately charged to a tenant constituted an addition to the rent which was charged.

The appeal panel made the following determinations. The lawful rent had been $450 before January 1st, 1978. It would be $477 on January 1st, 1978 (106% of $450). On June 1st, 1979 the lawful rent was $505.62 (106% of $477). The appeal panel concluded that rent had been charged in excess of that lawfully chargeable.

The appeal panel calculated the amount of excess rent which had been charged and ordered that the excess amount be rebated to the tenant.

In the circumstances no direction could be given concerning the outstanding hydro bill but the appeal panel indicated that, had it been paid, it would have constituted an additional rent payment in excess of the amount lawfully chargeable.

IN THE MATTER OF: 25 Davisville Avenue
Toronto, Ontario

AND IN THE MATTER OF an application for rent review by Z.W.D. Developments Limited (Landlord)

APPEAL PANEL: J. Bordeleau, M. Green, H. Snyder

DATE OF DECISION: July 9, 1981

FILE NUMBER: 126-TO-273

ISSUES: Section 128 of the Residential Tenancies Act - application where extensive renovations made in complex.

The landlord had applied under section 126 of the Residential Tenancies Act for an order permitting it to increase rents charged by more than the permitted maximum of six percent. The applicant had the primary intention of disputing the jurisdiction of the Commission and the initial hearing dealt only with this issue.

An initial decision was made by Commissioner S. Marshall dated March 16, 1981, which stated that the landlord was not entitled to establish new rents for units in the complex under section 128 of the Act. The Commissioner found that no structural changes had occurred and "no significant changes in the character of the units". The renovations amounted to normal maintenance and capital expenditures.

The landlord appealed the decision of Commissioner Marshall claiming that the evidence had not been properly considered. It was argued that the Commissioner's discretion should have been exercised to allow the landlord to set initial rents without regard to rent review guidelines, through the application of section 128 of the Act and Commission Guideline RR-9 "Re-renting of Unoccupied and Renovated Units". That guideline would permit a landlord to charge initial rents at market rates following a

major renovation which in effect created substantially new rental units such that it would be inappropriate to relate rents of the renovated units to the rents which had formerly been charged.

The appeal panel considered the submissions of the landlord. They found that the landlord had gained vacant possession of all units in the building in order to make major renovations. Initial plans for redevelopment and improvement were subsequently replaced by a less ambitious scheme.

The landlord had spent $8,000 to $9,000 per unit to renovate the 14-unit residential complex. Floors and walls were rebuilt. New plumbing, lighting, wiring and appliances were installed. Major roof and porch repairs also occurred. However, major structural changes were not undertaken.

The landlord, represented by George Danyliw, also claimed that a change in the character of the rental units had occurred such that luxury units had been created which should be exempt from determination of rents by the Commission. He argued that the building was equivalent to new construction. He felt he had not been fairly treated. He also claimed to suffer personal financial hardship as a result of his dealings with the property.

The appeal panel found no evidence of bias in the original decision and could not take into account any impressions or personal hardship that might affect George Danyliw, who was the only shareholder of the appellant company. Only the corporate landlord could be considered in examining the financial aspect of the appeal. The amount of any loss or hardship could only be considered in the context of a rent review and not in relation to arguments relating only to the exemption of the complex from Part XI of the Residential Tenancies Act.

The appeal panel found that the actual improvements to the building all constituted normal repair and upgrading. The work done was only major catch-up maintenance carried out over a short period.

Section 128 of the Act and the Commission's Guideline RR-9 "Re-Renting of Unoccupied and Renovated Units" were considered. The Guideline indicates that section 128 will only apply "...if the renovations

effectively create a new rental unit". The creation of a new unit does not necessarily require major structural changes, but the appeal panel felt that the renovations were not sufficiently substantial to create a new rental unit. They affirmed Commissioner Marshall's initial level decision and rejected the landlord's arguments.

The Commission could therefore proceed to establish rents based on an application under section 126 of the Residential Tenancies Act.

IN THE MATTER OF: King Towers
3434 Eglinton Avenue East
Scarborough, Ontario

AND IN THE MATTER OF an application for rent review by Harcheong & F.K.Y. Investments (Landlord)

APPEAL PANEL: N. Doorenspleet, E. Pollock, J. Thomson

DATE OF ORDER: September 2, 1980

FILE NUMBER: 126-SB-012

ISSUES: Withdrawal of an application - considerations made in granting consent thereto

Apportionment of the justified rent increase - equalization.

The landlord of this high-rise multi-unit residential complex applied under section 126 of the Residential Tenancies Act for an order allowing it to increase the rents charged by more than the permitted maximum of six percent. At the outset of the initial hearing, the landlord indicated that he wished to withdraw his application, and sought the Commissioner's consent to do so. Subsection 102(3) of the Act provides that an application under section 126 may only be withdrawn with the consent of the Commission.

Commissioner Tatay noted that for a sizable number of the 228 units under review, the proposed rent increases would, if approved, take effect immediately or within one or two months of the hearing date. To allow the landlord to withdraw the application and impose instead a six percent rent increase would deprive the tenants of their right to dispute the increase in an application under subsection 127(1), which must be made not less than sixty days before the effective date of the intended rent increase. Many of the affected tenants were not in attendance at the hearing, so it was not possible to discern whether they would consent to or dispute a six percent increase in rent. The Commissioner decided that in view of these considerations, it would be more equitable to withhold his consent to a

withdrawal of the landlord's application, and so proceeded with the hearing. After reviewing all of the evidence presented, Commissioner Tatay found justification for certain rent increases and issued an order dated February 11, 1980, setting out the maximum monthly rents that could be charged.

Several tenants appealed this order, and the remainder were added by the Commission as parties to the appeal. The appeal related to a number of issues, one of which concerned the propriety of the Commissioner's decision to withhold his consent to the withdrawal of the application, and another which challenged the method of apportionment of the justified rent increase utilized by Commissioner Tatay.

With respect to the first issue mentioned, the tenants argued at the appeal hearing that the Commissioner's concerns regarding the effect of withdrawal on certain tenants who would be experiencing rapid increases were unfounded, since the Commission could always exercise its authority under section 97 of the Act and allow such tenants an extension of time to challenge the increases. The appeal panel considered the tenants' arguments, but could not be pursuaded to interfere with Commissioner Tatay's decision on this basis.

With respect to the apportionment issue, the tenants argued that the Commissioner should not have accepted the rent schedule as proposed by the landlord. It was regarded as unfair that tenants who in the past had successfully disputed excessive rent increases were now facing the largest increases. The panel considered this argument and in accepting the method of apportionment used by Commissioner Tatay, responded as follows:

> "We are of the opinion that the total rent increase justified should be allocated in such a way as to achieve a fair distribution. Therefore, those tenants who in the past have been paying a lesser rent for equivalent accommodation should now bear a higher proportion of the amount to be allocated. As well, tenants who proportionately have paid a higher rent will experience a smaller increase. The total of all increases will not exceed the total amount of cost increase found to be justified.

> We hold the view that a tenant who formerly appealed a rent review order should not be paying less for equivalent accommodation just because of a past rental determination. Under the expired rent review legislation units were reviewed on an individual basis, whereas the new legislation calls for a whole building review and balancing of all rents. The basic current monthly rents established by the Commissioner represents lawfully chargeable rents at the time of the rent review application. It is inevitable that some tenants will receive larger increases than others when rents are balanced so that similar rents are set for similar accommodation.
>
> Since the landlord is entitled to the total amount of his justified costs, the failure to give some tenants the full increase necessary to balance their rents, would mean that other tenants would pay greater increases than are now granted in the order, to make up the remainder of the landlord's justified increase.
>
> The appeal panel has therefore found the method of setting the rents as used by the Commissioner to be appropriate."

After ruling on a number of unrelated arguments, the panel set aside the order of Commissioner Tatay and substituted a new order setting out new maximum monthly rents.

IN THE MATTER OF:	**603, 605, 609, 617 and 621 8th Avenue South Kenora, Ontario**
BETWEEN:	**R. Copenance et al. (Tenants) - and - Canada Mortgage and Housing Corporation (Landlord)**
COMMISSIONER:	**R. C. Yurkoski**
DATE OF DECISION:	**August 25, 1980**
FILE NUMBER:	**127-KN-010**
ISSUES:	**Exemptions - section 134(1)(a) of the Residential Tenancies Act - "owned, operated or administered by or on behalf of the Government of Canada.**

Tenants of several single family dwellings applied jointly to the Commission under section 127 of the Residential Tenancies Act for an order requiring the landlord to reduce the amount of the rent increase proposed for these units.

At the hearing of this application, it was established that CMHC clearly the owner of the units in question. It was argued by the landlord's agent that as the Canada Mortgage and Housing Act deems (CMHC) to be an agent of the Crown, subsection 134(1)(a) of the Residential Tenancies Act, which exempts from rent review "a rental unit situate in a residential complex owned, operated or administered by or on behalf of the Government of Canada or Ontario or a municipality...", would have application. The agent also cited a prior decision of the Commission respecting the Main Square Complex in Toronto [(1989), 1 R.T.C. 23] which found the units in question to be owned by C.M.H.C and therefore exemptunder subsection 134(1)(a), and argued that this decision should be reagarded as persuasive on this issue.

Agent for the tenants argued in opposition that the above-noted exemption should not apply in this case, due to a number of extenuating circumstances. The first point submitted was that the lease between the tenants and CMHC contained a provision which overrode the exemption. This provision stated that "In construing the provisions of this lease it shall at all times be subject to the provisions of the applicable Landlord and Tenant legislation". The tenants' agent argued that this provision made applicable the Residential Tenancies Act, and that therefore the rent review procedure would apply. Commissioner Yurkoski considered this argument and concluded that while the provisions in the lease did make the Act applicable, also applicable were the exemptions contained in the Act. Further, even if the lease had purported to waive the exemptions, such a waiver would have been ineffective by virtue of section 2 of the Act, which precludes such a waiver. This argument was therefore rejected accordingly.

The tenants next raised the argument that single-family dwellings do not fall within the definition of "residential complex" set out in section 1(l)(n) of the Act, reproduced as follows:

> **"residential complex" means a building, related group of buildings or mobile home park, in which one or more rental units are located and includes all common areas, services and facilities available for the use of residents of the building, buildings or park".**

The Commissioner rejected this argument also, stating that "the homes are a "related group of buildings" inasmuch as the residential area has a subdivisional label attached and the units are owned and operated by CMHC".

The third argument submitted by the tenants was that the exemption contained in section 134(l)(a) should only protect CMHC when it is performing functions of a public nature, as opposed to functions of a private or commercial nature. In support of this proposition, the tenants' agent cited several court cases dealing with the doctrine of sovereign immunity. Commissioner Yurkoski found these to be of little relevance, and stated further that had the Legislature intended to make a distinction between the public and private acts of Government agencies, presumably such distinction would have been made explicitly in the Act.

The final argument submitted by the tenants called into question the constitutionality of section 134(1)(a) of the Act. It was submitted that the provincial government cannot make law with respect to the Federal Crown or its agents, and thus this Act was unconstitutional.

Commissioner Yurkoski reasoned that if in fact the Federal Crown cannot be governed by provincial legislation, then it follows that the Residential Tenancies Act would not bind CMHC to any of its provisions, and thus the units would be exempt from rent review in any event. It was therefore not necessary to make a ruling on this submission.

In the result, Commissioner Yurkoski concluded that the exemption provided by section 134(1)(a) of the Act applied, and that he therefore had no jurisdiction to proceed. The application was dismissed accordingly.

IN THE MATTER OF: 6 Forest Laneway
Willowdale, Ontario

AND IN THE MATTER OF an application for rent review by Rank City Wall Canada Limited (Landlord)

APPEAL PANEL: P. Tatay, N. Myrhorod, J. Thomson

DATE OF DECISION: June 30, 1981

FILE NUMBER: 126-NY-082

ISSUES: Procedure - admissible evidence at hearing.

The landlord of this 365-unit residential complex applied under section 126 of the Residential Tenancies Act for an order permitting it to increase rents by more than the permitted maximum of six percent.

At the hearing issues were raised concerning the validity of the application, the admissibility of oral and written evidence at the hearing and the equalization of rents. Commissioner Little did not find that any of the issues raised caused him to lose jurisdiction and accordingly an order was issued dated February 26, 1981, which set maximum chargeable rents for units in the residential complex.

The tenants appealed under section 117 of the Residential Tenancies Act against the order of Commissioner Little. At the hearing, a number of legal arguments were raised. The tenants questioned the use of unsworn evidence which they felt should not be permitted. They felt that the Commission would lose jurisdiction by allowing the introduction of such evidence.

The appeal panel referred to the Statutory Powers Procedure Act and the Residential Tenancies Act in this regard. Section 3 of the S.P.P.A. distinguishes courts from tribunals which exercise a statutory power of decision. The Residential Tenancy Commission is not subject to the Rules of Court. Subject to certain exceptions, section 15 of the S.P.P.A. governs

the admissibility of evidence before such tribunals and may be interpreted to permit the Commission to admit unsworn evidence, hearsay, opinions, or the conclusions of a witness at its hearings. Any written documents or reports containing facts from any source whether or not produced by the person who prepared the document or report might also be admitted as evidence.

The panel considered a legal interpretation of the Statutory Powers Procedure Act, 1971 prepared by D. W. Mundell, Q.C. in his Manual of Practice on Administrative Law and Procedure in Ontario, page 18, in making these findings.

Subsection 15(2) of the S.P.P.A. reads as follows:

> **"Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,**
>
> **(a) any oral testimony; and**
> **(b) any document or other thing,**
>
> **relevant to the subject matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious."**

Subsection 2 makes an exception for certain inadmissible evidence while subsection (3) makes a further exception to the use of evidence which is expressly limited by an Act.

The panel concluded that section 15 of the S.P.P.A. gave Commissioner Little sufficient authority to consider the evidence and to find it admissible. The panel noted however, that the Commission retains the option to require material or testimony to be presented in accordance with the rules of evidence applicable in the courts in the event that stricter standards of proof are required. This is made clear by section 22 of the S.P.P.A. which permits a tribunal to take evidence under oath or by affirmation.

Accordingly, the appellants' arguments on this issue were rejected by the panel. Subsequently, a further appeal was made to the Supreme Court of Ontario by the tenants based on various aspects of the arguments mentioned above as well as on other matters. This appeal has now been dismissed under Rule 502 of the Rules of Practice of the Supreme Court of Ontario as an abandoned appeal.

IN THE MATTER OF: Halam Park Development Limited
Shadyside and Halam Avenues
25th and 27th Streets
Hamilton, Ontario

AND IN THE MATTER OF an application for rent review by Halam Park Development Limited (Landlord)

APPEAL PANEL: N. Doorenspleet, M. Green, J. Thomson

DATE OF DECISION: November 20, 1980

FILE NUMBER: 126-HM-015

ISSUES: Exemptions - sub-s. 134(1)(a) of the Residential Tenancies Act - "owned, operated or administered by or on behalf of the Government of Canada".

Constitutional law - doctrine of paramountcy - the Residential Tenancies Act and the National Housing Act (Canada).

The landlord of this 96-unit complex applied under section 126 of the Residential Tenancies Act for an order allowing it to increase the rents charged by more than the permitted maximum of six percent.

At the outset of the initial hearing held before Commissioner Preston, it was argued on behalf of the landlord that the premises should be declared exempt from rent review pursuant to section 134 of the Act. Commissioner Preston rejected this argument and went on to issue an order setting out the maximum monthly rents that could be charged.

The landlord subsequently appealed this order on the ground that Commissioner Preston had erred in ascertaining that the premises were subject to rent review. The basis of the appeal and the landlord's claim for exemption as taken from the Notice of Appeal was as follows:

(a) "Part XI of the Residential Tenancies Act does not apply for constitutional reasons. The National Housing Act (Canada), which regulates rents in limited dividend housing corporations, which this is, is paramount.

(b) This complex is exempt under section 134(1)(a) of the Residential Tenancies Act, because it is owned, operated or administered by or on behalf of the Government of Canada or an agency thereof. CMHC is significantly involved in management, and restrictions on landlord's use and control by it are so extensive that the landlord effectively operates/administers the complex on CMHC's behalf."

Counsel for the landlord argued firstly under ground (a) of the appeal that since the rents chargeable for the subject units are already regulated by CMHC under the National Housing Act, there is no scope for operation of the Residential Tenancies Act which has the same purpose. In support of this proposition, reference was made to the case of A. G. Quebec v. Larue. It was further argued that even if the provincial legislation was not identical to the federal, it would still constitute conflicting legislation in an occupied field, and there can only be one regulating authority. Under the paramountcy doctrine, the Residential Tenancies Act is rendered inoperative insofar as it purports to control rents of a limited dividend housing corporation where rents are set by CMHC under federal law.

In considering the argument based on the constitutional doctrine of paramountcy, reference was made by the appeal panel to the work entitled Constitutional Law of Canada by Professor P. W. Hogg, a recognized authority on the subject. At page 111 of this book it was noted in a discussion relating to the subject of paramountcy that "whether the laws are inconsistent or not depends not on their dominant purpose or aspect but upon whether they are compatible in operation".

In examining the two Acts for compatibility, the panel studied the provisions of the relevant sections. The panel concluded after such review that in fact, the statutes contemplated differing results. Under the National Housing Act, the requirement is made that the parties enter into a contract providing that the rentals to be charged "shall be rentals that [CMHC] deems to be fair and reasonable ....". The Act does not envisage the "setting" of any rents, rather it reserves the right to CMHC to maintain ultimate control over the total amount charged so that the rents will be "fair and reasonable". A distinction must therefore be made

between "deeming" rents to be fair, and actively "setting" rents. The National Housing Act merely defines the rights of the parties in regard to the lending arrangement between the lender corporation and the borrower, whereas the Residential Tenancies Act permits the Commission to set maximum permitted rents on all non-exempt units within the province. The decision of the Commission is binding on any subsequent landlord or tenant. The panel further noted that "it seems quite possible for parties acting under the provisions of the National Housing Act to indicate the kind of rentals considered necessary, while at the same time recognizing that there can be a rent ceiling imposed by the province which cannot be exceeded. In such circumstances, there appears to be no incompatability between the two Acts". The first ground of the landlord's appeal was accordingly rejected.

The second argument on appeal related to sub-s. 134(1)(a) of the Residential Tenancies Act, quoted previously. Counsel for the landlord argued that because of the controls enforced by CMHC, the owner is in essence only a manager for CMHC, and although a dividend is provided to the shareholders of the limited dividend company, it could be likened to a fee when one considers the limited scope the owner has to assert his ownership.

This argument was also rejected. The panel reviewed the evidence and concluded that while there was no doubt that CMHC did have the authority to insist on the fulfillment of certain conditions by the owner, this influence was not unlike that found in contracts between other lenders and borrowers. The company is not a non-profit organization and retains the right to sell the property to an approved purchaser and to participate in the assets in the event that the enterprise is wound up. Thus the exemption under consideration was found to be inapplicable.

In the result, the order of Commissioner Preston was affirmed.*

*Note: this decision is currently under appeal by the landlord to the Divisional Court

IN THE MATTER OF:	**Apartment 1 17 Herkimer Street Hamilton, Ontario**
BETWEEN:	**Barbara Dow and Kim Fedun (Tenants) - and - Bruce and Judith Berglund (Landlords)**
APPEAL PANEL:	**J. Thomson, K. Timney, N. Doorenspleet**
DATE OF ORDER:	**May 26, 1981**
FILE NUMBER:	**129-HM-139**
ISSUES:	**Renovations - whether renovations undertaken by landlords were sufficient to create a "new unit" on which a new rent could be set - section 4(6) of the Residential Premises Rent Review Act.**

The tenants applied under section 129 of the Residential Tenancies Act for an order that the landlords refund excess rents paid, and for a declaration of the rent that could lawfully be charged.

It was established at a hearing held before Commissioner Heller that the tenants had occupied the subject premises during the period March 1979 through May 1980, at a monthly rental of $330. It was further established that the prior monthly rental for the subject unit as of November 1978 had been $160, and that the landlords had acquired the complex in February, 1978.

The landlords presented evidence that during the period of October 1978 to February 1979 they had performed a great deal of work in the subject apartment, including plastering, painting, wallpapering, replacement of appliances, counter top and sink, floor sanding and finishing, and general repairing and cleaning. The landlords contended that as a result of this work, the unit had undergone such a substantial change that it could now be regarded as a new unit and a new rent could be set accordingly.

Commissioner Heller considered the evidence offered by the landlords regarding the improvements made in the unit, and concluded that the evidence was not sufficient to convince her that a new unit within the meaning of subsection 4(6) of the Residential Premises Rent Review Act had been created. The Commissioner commented that the work done was actually more in the nature of overdue repairs, maintenance and capital expenditures than true renovations. Consequently, Commissioner Heller computed the rent overcharges, ordered the landlords to repay the excess amounts paid, and declared the lawful rent for the period at $162.92 per month.

The landlords appealed this order on the grounds that the Commissioner had erred in not ruling that a new unit had been created. At the appeal hearing, evidence was again presented regarding the work that had been performed.

Counsel for the tenants argued that a new unit had not been created and that consequently the initial order should be affirmed. Counsel pointed out that the work done did not require a building permit, did not result in significant structural change, and in his view was merely of the type landlords are required to do to maintain habitable accommodation.

Counsel for the landlords contended that the work done amounted to far more than simple repairs, pointing out as evidence in support of this position that vacant possession of the unit had been required in order to complete the work. It was also argued that the absence of structural change was intentional, owing to the fact that the landlords are interested in the restoration of historical buildings and sought to preserve the basic structure of the building. Counsel referred to Interpretation Guideline No. RR-9 as issued by the Board of Commissioners, which states that:

> "... the creation of a new unit does not necessarily require structural changes. A significant change in the character of a unit would be sufficient to justify treating the unit as new. For example, an ordinary apartment could be turned into a luxury apartment without any change in size or layout".

The landlord's solicitor argued in reliance on this Guideline that the renovations performed on the subject unit had the effect of transforming poor, slum-like accommodation into excellent accommodation, and thus had the effect of creating a new unit.

The panel was split on its determination in this matter. A majority of members concluded that the cost of renovations to this unit, including a notional allowance of $10 an hour for the landlords' labour, amounted to $5,274. They found that a structural change to the unit had occurred by virtue of the creation of an additional 70 square feet in the kitchen area, and that various renovations to the common areas had been performed as well. The majority then stated that "while there is no absolute standard to use in determining whether renovations have produced a new unit or not, we are of the opinion that the changes and upgrading of apartment one itself were substantial as evidenced by the notional total cost of $5,274." Commissioners Thomson and Timney therefore decided to set aside the initial order of Commissioner Heller. They found that on balance, the changes made to the apartment were of such substance that it would be unfair to deny the landlord the right in accordance with section 4(6) and 14(1)(c) of the Residential Premises Rent Review Act to set the first rent without applying for rent review. They noted, however, that all future rent increases would be subject to rent review under the Residential Tenancies Act.

Commissioner Doorenspleet dissented from the majority opinion on the grounds that the work performed was simply not substantial enough to have the effect of creating a new unit. The Commissioner was of the view that the renovations were not of a permanent nature, and therefore amounted only to overdue maintenance and repair. Commissioner Doorenspleet was not impressed with the landlord's arguments regarding the historical value of the building, noting that no real evidence had been adduced on this point, and was also unwilling to make reference to Guideline RR-9, as neither this guideline nor the present legislation under which it was drafted was in existence when the landlord began charging the new rent. Commissioner Doorenspleet would therefore have affirmed the initial order of Commissioner Heller.

In the result the order of Commissioner Heller was set aside, and an order substituted setting the lawful rent for the unit for the period of time in dispute at $330 per month and determining that the tenants had paid no excess rents.

IN THE MATTER OF: 146-152 Hilton Avenue
Toronto, Ontario

AND IN THE MATTER OF an application for rent review by Janet R. Imrie (Landlord)

COMMISSIONER: N. Myrhorod

DATE OF ORDER: June 25, 1981

FILE NUMBER: 126-TO-332

ISSUES: Apportionment of rent increases - equalization - considerations.

The landlord of these two buildings containing 16 rental units applied under section 126 of the Residential Tenancies Act for an order permitting her to increase the rents charged by more than the permitted maximum of six per cent.

The rent review was not unusual but detailed consideration had to be given to the apportionment of the aggregate increase in revenue which the landlord had justified. The rental units fell into five categories ("A" to "E"). Each category of rental unit differed in size or in amenities. The Commissioner noted differences in square footage of floor area which were useful in distinguishing the categories and in establishing rent differentials.

Rents for each category of rental unit as proposed by the landlord were totalled and averaged as the means of equalizing rents within each category by obtaining an "average proposed rent" for each category. Once the justified increase was determined, a rent increase factor of .8718 was determined and applied in the usual way to the average proposed rent for each category. By this process the actual maximum rents chargeable were determined.

IN THE MATTER OF:	**378 Huron Street Toronto, Ontario**
BETWEEN:	**Robert Nixon, et al. (Tenants) - and - Stacie Marune (Landlord)**
APPEAL PANEL:	**H. F. Snyder, J. F. Bordeleau, W. D. Biggar**
DATE OF ORDER:	**June 30, 1981**
FILE NUMBER:	**129-TO-240**
ISSUES:	**Jurisdictional issues - Application of section 128 of the Residential Tenancies Act where a residential complex has been renovated. Application of Guidelines RR-8 and RR-9 - determining rent overcharges.**

The five tenants at the above address living in separate rental units applied under section 129 of the Residential Tenancies Act for an order that the landlord refund excess rents paid and for a declaration of the rent that could lawfully be charged. Their applications were heard together.

Certain preliminary issues arose at the outset of the hearing before Commissioner Pollock.

Counsel for the landlord argued that the requirement for mediation set out in sections 102(1) and 103(1) of the Act had not been met. However, the evidence showed that the Commission had made inquiries and had decided that a hearing was required because of the urgency of having the issues resolved.

Counsel also objected to the Commission going beyond the issues raised in the applications by summonsing the landlord and the rental history on each of the five units. However, the Commissioner stated that he had jurisdiction to consider all relevant matters and to investigate and make an order which was justified as permitted by sections 109 and 110(2) of the Residential Tenancies Act.

It was established that the landlord had rented a house from the University of Toronto, and re-rented it to the five tenant applicants who were actually undertenants or sub-tenants living in parts of the house.

The landlord's own lease with the owner complied with the Residential Tenancies Act. The landlord had made extensive renovations in 1979. Prior to that time there appeared to be no unlawful rents. After 1979 the rental agreements provided that the applicants pay the supplier directly for their utilities. These costs did not form part of the rent charges.

The Commissioner examined the leases and concluded that Stacie Marune was "landlord" of the five applicants and that the applicants were "tenants" occupying rental units within the definitions contained in section 1 of the Residential Tenancies Act.

The Commissioner also found that because the rental history of the tenancies in question preceded 1980 it was necessary to consider the provisions of earlier legislation namely, the Residential Premises Rent Review Act, 1975. Under the earlier legislation a subtenant's rent could not exceed that paid by the tenant (section 10(a) R.P.R.R.A.). The tenants had argued that the Commission had no jurisdiction to permit rents greater than the rent paid by their landlord to the University of Toronto because of section 10(a). However, the Commissioner found that this provision applied to a normal subletting of a rental unit in the same condition and under the same terms. He found that the house had been subdivided, improved and furnished before being rented to the applicants. Also, administration and management were added. In the circumstances, section 10(a) of the Residential Premises Rent Review Act, 1975 should not apply and the rents of the applicants need have no particular relationship to the rent paid by the landlord.

The Commissioner considered the renovations and the value of the work involved, some of which was done by the landlord. The total value added by the renovations came to $7,500 in 1979 and involved detailed changes in each rental unit (e.g. decorating, plastering, woodwork, repairs to walls, replacing furniture, etc.).

The Commissioner then considered whether the renovations or improvements were sufficiently substantial to justify setting a first rent (set in 1979) at market values in accordance with subsection 4(6) of the Residential Premises Rent Review Act, 1975. Subsection 4(6) provided that where a rental unit in a building becomes first rented in a building which is not exempt from the Act, the rent charged for the first full month becomes the basis for setting future rents. Accordingly, the Commissioner had to determine whether the renovations were sufficient to create a substantially new rental unit such that it could be treated as never before rented. The Commissioner felt that the renovations were sufficiently extensive that a new initial rent could be set in respect of the rental units without regard to the prior rents charged.

After the first rent had been set later rent increases were governed by the applicable guidelines set out in sections 124 and 125 of the Residential Tenancies Act (for increases occurring in 1980). It was found that in four cases rent increases made in 1980 exceeded the six per cent maximum permitted and appropriate rebates were ordered by the Commissioner. In respect to one application no excessive rent increases were found.

This decision was subsequently appealed by both the landlord and the tenants and a number of issues were reconsidered.

The appeal panel reviewed the rents paid by Stacie Marune to the owner of the building and found them to be lawful. The tenant appellants' rents were also found to be lawful prior to 1979. These findings coincided with the findings of Commissioner Pollock at the initial hearing.

The appeal panel considered the definition of "rent", the leasing arrangement and the renovations that had been completed. The method of treatment of these points by Commissioner Pollock was affirmed in essence.

However, the appeal panel in viewing the renovations, came to a conclusion different from that arrived at by Commissioner Pollock. The panel considered section 4(6) of the Residential Premises Rent Review Act, 1975 as well as section 128 of the Residential Tenancies Act and

Guideline RR-9 but did not feel that these provisions were applicable so as to permit the landlord to set new rents without regard to former rents or the provisions limiting rent increases. Section 128 reads as follows:

> **"Where a rental unit that has not been rented during the previous twelve-month period then becomes rented, the rent then charged shall form the basis for determining whether subsequent rent increases exceed the percentage referred to in section 125, provided that the rent charged is comparable to the average rent charged for similar rental units in the residential complex."**

The panel felt that section 128 of the Residential Tenancies Act would apply if a 12-month vacancy had occurred and felt they should interpret section 128 narrowly. They were also prepared to apply section 128 if a structural change had occurred so that the renovated unit would attract another type of tenant. They felt section 128 could not be applied to the mere upgrading of rental units which they felt was the case in this instance. In this case the panel felt that capital expenditures should have been considered under a normal rent review application under section 126 of the Act. They concluded that a comparable rent approach was not correct.

The panel agreed, however, that the separately charged utilities and the application of subsection 10(a) of the former Residential Premises Rent Review Act, 1975, which dealt with subtenancies, had been properly considered by the initial level Commissioner in making his decision.

The appeal panel then considered the maximum rent chargeable for each rental unit on the basis of allowable statutory increases for each unit in accordance with sections 5(1) and 5(2) of the Residential Premises Rent Review Act and sections 124 and 125 of the Residential Tenancies Act as set out in Guideline RR-8 entitled "Rent Increases in Excess of Statutory Limits".

The appeal panel considered rent increases as far back as rental histories permitted within the periods covered by rent review legislation and allowed only guideline rent increases at such times as rents could have been lawfully raised. As a result, unlawful increases were determined to have been made in respect to all units except for the rental unit of Robert Nixon which had been first rented in 1978. An appropriate rebate was ordered to cover those situations where excess rent had been charged.

IN THE MATTER OF:	Apartment #2207 44 Jackes Avenue Toronto, Ontario
BETWEEN:	W. L. Robinson (Tenant) - and - Cadillac Fairview Corporation Ltd. (Landlord)
APPEAL PANEL:	N. Doorenspleet, P. Tatay, G. Isaac
DATE OF ORDER:	February 18, 1981
FILE NUMBER:	127-T0-227
ISSUES:	Section 127 of the Residential Tenancies Act - considerations to be made on an application under this section.

The tenant applied under section 127 of the Residential Tenancies Act for an order requiring the landlord to reduce the amount of an intended six percent increase in rents. It was pointed out by Commissioner Grimson at the outset of the hearing that in an application under section 127 of the Act, only the matters referred to in section 132 may be considered, namely:

1. **Variations, and the reasons therefor, in the rents being charged by the landlord for similar rental units within the residential complex.**

2. **Rents being charged by other landlords for similar rental units situate in similar residential complexes within the same geographical vicinity.**

3. **An improvement or deterioration shown to have occurred in the standard of maintenance and repair that affects the rental unit.**

The tenant's submissions were therefore considered only insofar as they related to these criteria.

With respect to the first consideration, the tenant alleged that he had received information from the property manager that the rent he was paying for his one bedroom apartment was the second highest in the three buildings operated by the landlord in the area, including the subject building. The landlord presented evidence that as of October 1, 1980, the

average rentals for similar units in the building were $372.40, and the tenant's rent of $403.58 was 8.37% above the average. Rentals ranged from $340 to $440 per month.

This disparity in rents was attributed to the different effective dates of rent increases in existence in the building. Commissioner Grimson surveyed a sampling of other similar units and found five of the rents higher than the tenant's, and four lower. On the basis of this survey, the Commissioner concluded that the rent being paid by the tenant fell within the range of rents being charged for similar units, and thus found no adjustment justified by this first statutory consideration.

The Commissioner next considered the second criterion, but commented that where there are a large number of similar units located in the same complex as the unit under review, comparison with units in other buildings is of "relatively little assistance". Commissioner Grimson noted that because there are many factors which vary from building to building, rents in other buildings should be given significant weight only where the subject building does not contain an adequate number of suitably comparable units. As there were 42 other units in the same building with which to compare the subject unit, Commissioner Grimson saw no justification for comparing rents in other buildings.

The third and last consideration was then addressed, and the tenant was unable to provide any evidence to warrant an adjustment on this basis. Commissioner Grimson having concluded the review and having found no justification for reducing the proposed increase, accordingly issued an order setting the maximum rent that could be charged.

The tenant appealed this order on the grounds that Commissioner Grimson had erred in failing to find that the evidence presented warranted a reduction in the proposed rent increase. The appeal panel canvassed the issue fully but could find no reason to disturb the initial order. Consequently, an appeal decision was issued affirming the order of Commissioner Grimson.

IN THE MATTER OF: Suite 604
825 Kennedy Road
Scarborough, Ontario

AND IN THE MATTER OF an application to determine jurisdiction by Jashu Enterprises Limited (Landlord)

COMMISSIONER: K. J. Timney

DATE OF ORDER: March 3rd, 1981

FILE NUMBER: 126-081-SB

ISSUES: Exemptions - whether Part XI of the Residential Tenancies Act applies to a condominium unit in a building which existed as rental accommodation prior to 1976.

The building in question had been a rented residential complex prior to 1976. It was converted to a condominium residential apartment complex on May 28th, 1977. The landlord of unit 604, Jashu Enterprises Limited, purchased the unit in 1980. In his application under section 126 of the Residential Tenancies Act the owner subsequently argued that the building was exempt from rent review because of the change in its legal character.

The Commissioner found that the condominium unit in question had not changed physically. It was also noted that a rental order had been made affecting the residential premises in August, 1976. The Commissioner decided the condominium unit was subject to rent review as it did not fall under the exemption in section 134(1)(c) of the Act which reads:

> 134- (1) **The following rental units are exempt from this part.**
>
> (c) **a rental unit situate in a building no part of which was occupied as a rental unit before the 1st day of January, 1976;**

Consequently, when rented, the condominium unit would be subject to Part XI of the Residential Tenancies Act.

IN THE MATTER OF: 3969 Kingston Road Apartments
3969 Kingston Road
Scarborough, Ontario

AND IN THE MATTER OF an application for rent review by 308182 Ontario Limited (Landlord)

APPEAL PANEL: N. Myrhorod, M. Green, G. Isaac

DATE OF DECISION: October 3, 1980

FILE NUMBER: 126-SB-031

ISSUES: Operating costs - whether advertising costs can be considered as a separate expense - whether reasonableness of costs must be considered.

Standard of maintenance and repair - whether landlord can be ordered to improve standard.

The landlord of this high-rise, multi-unit complex applied under section 126 of the Residential Tenancies Act for an order allowing it to increase the rents charged by more than the permitted maximum of six percent.

At the hearing held to consider the application, it was argued on behalf of the landlord that projected advertising expenditures should be allowed as a separate operating cost. Such treatment would require the Commissioner to depart from the method suggested in the Guide to the Cost Revenue Statement issued by the Board of Commissioners, which would have advertising costs included in the 5 percent allowance given for management and administrative overhead. The landlord's agent stated that the advertising costs were deserving of unique treatment because they were extensive, owing to the location of the building. It was further argued that if the costs were not allowed separately and advertising were curtailed, the vacancy rate in the building would increase and the revenue would accordingly be reduced, resulting in a requirement for higher rent increases in the future. Commissioner Harrott considered this argument, and noting that these costs had been allowed separately in past rent reviews, decided to adopt this method of treatment and thus allowed the projected increase in advertising costs in addition to the allowance for management and administrative overhead.

In continuing with the review, Commissioner Harrott turned to a consideration of the standard of maintenance and repair in the complex, as required under paragraph 131(1)(c) of the Act. The Commissioner noted that it would be reasonable to limit the consideration to what had transpired since the last rent increase. Commissioner Harrott found that the evidence presented did not warrant a finding that the standard had deteriorated, but did indicate that the tenants wished the standard to be improved. In reviewing the financial data provided by the landlord, the Commissioner further determined that no added funds (other than those necessary to cover inflation) had been budgeted for expenditure in the projected year for maintenance costs, thus, it could be inferred that the landlord was planning neither a deterioration nor an improvement in the standard of maintenance and repair in the complex. The Commissioner stated that he had no authority to decree an increase in maintenance standards, as he had no authority to ensure compliance. Thus, no adjustment was made to the justified rent increase otherwise found on this basis.

Commissioner Harrott then concluded the review and issued an order setting the maximum chargeable rents.

Certain of the tenants appealed this order, making reference to both of the above-noted issues. It was argued with respect to advertising costs that such costs should be included as part of the five percent allowance for management and administrative overhead, or in the alternative that they should be reduced since they were excessive.

The panel considered these arguments but declined to interfere with Commissioner Harrott's treatment of these costs. It was noted that the landlord had submitted a complete set of audited financial statements in this regard and there was therefore no reason to doubt that the expenditure had been made. With respect to the purported excessiveness of the costs, the panel remarked that "whether the costs were necessary or even wisely incurred is a matter over which we cannot pass judgment".

The tenants again raised the issue of the standard of maintenance and repair in the building, but the panel could not be persuaded to interfere with the initial Commissioner's findings in this regard, and in the result, the order of Commissioner Harrott was affirmed.

IN THE MATTER OF: 2645 Kipling Avenue
Rexdale, Ontario

AND IN THE MATTER OF an application for rent review by Grenadier Investments Ltd. (Landlord)

APPEAL PANEL: N. Doorenspleet, D. Biggar, G. Isaac

DATE OF DECISION: August 14, 1980

FILE NUMBER: 126-ET-43

ISSUES: Treatment of landlord's costs incurred in preparing for rent review

Service of copy of landlord's application - whether landlord's failure to do so will deprive the Commission of jurisdiction

Notice of Rent Increase - whether propriety of notice will be considered on an application for rent review.

The landlord of this large multi-unit complex applied under section 126 of the Residential Tenancies Act for an order allowing it to increase the rent charged by more than the permitted maximum of six percent. After reviewing all of the evidence presented, Commissioner Sawchyn found justification for certain rent increases and issued an order dated April 14, 1980, setting out the maximum monthly rents that could be charged.

Certain of the tenants filed an appeal against this order, submitting three basic arguments in support thereof. Firstly, it was contended that the Commissioner had treated the landlord's rent review costs improperly. The landlord had included as an operating cost for the projected year the sum of $2,000 incurred in preparing for the rent review application. Commissioner Sawchyn had allowed this cost as claimed, and the tenants argued that this was improper. The appeal panel considered this argument and concluded that in this case, the treatment of this cost had been reasonable. The panel stated that rent review costs should be allowed as

an operating cost, though this cost could either be passed through in one year or spread over several years, depending on the circumstances. For example, if the current review was based on increased financing costs not to be incurred again for a number of years, it would be appropriate to pass through the rent review costs in more than one year since they would likely be non-recurring, and therefore not indicitive of a normal operating expense. Conversely, it might be that the landlord will have to apply again to claim the remainder of a financial loss or because an increase in financing costs is expected next year. In this case, rent review costs should perhaps be passed through in one year.

The tenants next argued that they had not been served with a copy of the landlord's application for rent review as required by section 98 of the Residential Tenancies Act, and for that reason Commissioner Sawchyn should have dismissed the application. Commissioner Sawchyn had evidently found that he did have jurisdiction to consider the initial application and did not mention this issue in his Reasons supporting the initial order.

The landlord contended that copies of the application had been served on the tenants as required. The panel concluded that even if such copies had not been received, it was clear that the contents of the application had come to the attention of the tenants and that they accordingly had notice of the application. Reference was made to subsection 99(4) of the Act which provides that a notice or document "shall be deemed to have been validly given where it is proven that the contents of the notice or document actually came to the attention of the person for whom the notice or document was intended". The panel therefore concluded that Commissioner Sawchyn did have jurisdiction to proceed with the application.

The tenants then argued that the landlord had failed to serve a proper 90-day notice of rent increase as required by section 60 of the Residential Tenancies Act. The panel stated in reply that it was not necessary to consider the requirements of section 60 in an application for rent review under Part XI of the Act. The panel stated that while the order issued by the Commissioner sets out the maximum chargeable rents and the earliest possible effective dates of same, it does not relieve the landlord from compliance with section 60. In order to be in a position to legally collect

the rent increase ordered, the landlord must first serve a proper notice of rent increase. However, the issue of whether a proper notice has been served is not a matter for consideration on a landlord's application for rent review.

The panel then went on to consider the remainder of the tenants' submissions and, in the result, the order of Commissioner Sawchyn was affirmed.

IN THE MATTER OF: 1440-1442 Lawrence Avenue West
Toronto, Ontario

AND IN THE MATTER OF an Application for rent review by D. Shafran Investments Limited (Landlord).

COMMISSIONER: P. Loftus

DATE OF DECISION: June 11, 1981

FILE NUMBER: 126-NY-129

ISSUES: Cost Correction - Adjustment of fiscal periods.

The landlord of this multi-unit residential complex applied under section 126 of the Residential Tenancies Act for an order permitting him to increase rents by more than the permitted maximum of six percent.

As part of the rent review a cost correction was required so that cost data which had been estimated at a rent review the year before could be corrected by adjusting these estimates to the actual costs incurred during the previous year.

As a new landlord had acquired the buildings on June 1st, 1980, he wished to use the June 1, 1980 to May 31, 1981 period as his projected year. The previous rent review had considered the period May 1, 1979 to April 30, 1980 which would be Year 2 under the current rent review.

The Commissioner noted the one-month gap between the period previously considered and the period proposed as the projected year under the current review and felt that it would not be unfair to compare the two periods as some of the costs were the same. The actual costs for the June 1, 1979 to May 31, 1980 period were now known and had been included on the landlord's Cost Revenue Statement. These costs were compared to previously awarded costs.

Prior to December 1st, 1979 when the Residential Premises Rent Review Act, 1975 was in force a rent review could occur which did not include all rental units in a building at the same time. Several rent reviews of this building had occurred in 1979 each involving different rental units. Consequently, careful adjustments and comparisons of costs were required when cost correction was considered.

Some costs required adjustment. For example, at a May 15th, 1979 rent review hearing 15 units were allowed costs at $80,834 whereas actual costs were $77,359. The 15 units out of a total of 410 amounted to .0365% of the building. Therefore, .0365% of $77,357 was adjusted using this percentage for a margin adjustment of $283. Other hearings in 1979 which affected 156 units were similarly adjusted. The total margin adjustment was $26,674 representing a reduction to be made to costs awarded at the current rent review in order to offset over-allowances in projected costs awarded prior to the current rent review.

After the costs were reviewed the landlord was in a slight loss position and this loss was fully allowed as a cost-pass-through in order to permit the landlord to break even on the operation of the building. Consequently in this instance, the margin adjustment did not affect the landlord so as to create any significant financial effect.

The order of Commissioner Loftus was subsequently appealed by the tenants and the new owner, Landstake Investment Limited was added as a party to the appeal. An appeal order was issued on January 28, 1982 but did not interfere with the procedure used by Commissioner Loftus in dealing with the Cost Correction.

The appeal did result in a reduction of certain projected operating cost increases so that the maximum chargeable rents were in fact reduced by the appeal order.

IN THE MATTER OF: 1770 Paris Street
Sudbury, Ontario

AND IN THE MATTER OF an application for rent review by 300334 Ontario Limited (Landlord)

APPEAL PANEL: K. Timney, P. Tatay, E. Pollock

DATE OF DECISION: November 24, 1980

FILE NUMBER: 126-SD-052

ISSUES: Operating Costs - expenses incurred when work contracted for not completed.

Legal costs - treatment of landlord's legal costs incurred in preparation for hearing.

The landlord applied under section 126 of the Residential Tenancies Act for an order allowing it to increase the rents charged by more than the permitted maximum of six percent. Evidence of increased costs was presented in order to justify the proposed rent increases. With respect to operating costs for the complex, the landlord included in its figures the sum of $11,214, representing a cash advance paid to a roofing contractor and subsequently forfeited when the contractor went out of business before completing the required repairs. The tenants objected to the inclusion of this amount, maintaining that it was unfair to expect them to cover this cost by way of increased rents. They pointed out that since the repairs were eventually completed by another contractor, they were really paying twice for the same work. The tenants also expressed doubts as to the competence of the landlord in managing the complex, given the poor business arrangement that was entered into here.

Commissioner Durbacz considered all submissions and finally decided to disallow the amount as an operating cost but to include it as a capital expenditure and amortize the expense over two years. The Commissioner could find no fault with the landlord in this case regarding its management of the situation, noting that every effort had been made to recover the lost advance, but without success. The fact that the work was stopped in progress was accepted as proof that a valid contract had been entered into

and performance begun, and the Commissioner took the view that the contractor's business failure was entirely unforeseeable. Thus, it was perceived as fair that this expense should be seen as some justification for a rent increase, although the effect was spread out over a number of years so as to cushion the impact on the tenants.

The landlord also wished to include as part of its operating costs the sum of $3,850 for legal and accounting fees incurred in preparation for this hearing. The tenants objected, arguing that since they were not permitted to expense their legal and accounting costs in a similar manner, it was unfair that the landlord be allowed to do so. Commissioner Durbacz sympathized with the tenants, but stated that the landlord's expenses were nonetheless valid and proceeded to include them as part of the operating costs. The Commissioner commented that there appeared to be no means under the legislation by which tenants could recover their similar expenses, except by succeeding in reducing proposed increases as a result of their decision to hire knowledgeable agents. Commissioner Durbacz then completed the review and the justified rent increase was calculated accordingly.

Five tenants appealed this order, disputing among other matters, the Commissioner's treatment of the roofing costs. After considering the tenants' submissions, the appeal panel ruled that these costs were dealt with fairly, and in the result, the order of Commissioner Durbacz was affirmed.

IN THE MATTER OF: 415 Parkside Drive
Toronto, Ontario

AND IN THE MATTER OF an application for rent review by Sylvia Argue (Landlord)

COMMISSIONER: R. P. Grimson

DATE OF ORDER: January 19, 1981

FILE NUMBER: 126-TO-249

ISSUES: Acquisition costs - valuation - transfer of property between spouses.

The landlord of this triplex residential complex applied under section 126 of the Residential Tenancies Act for an order allowing her to increase the rents charged by more than the permitted maximum of six percent.

Sylvia Argue obtained sole ownership of the property in question after she acquired a 50 percent interest in the residential complex from her husband following a marriage breakdown. The Commissioner treated the acquisition of the husband's interest like a purchase of a half interest in the property for rent review purposes.

The Commissioner realized that the transaction was not at arm's length, but at the same time found that the sale was a necessity in the circumstances. The refinancing was possibly not as onerous as might have been the case had a sale to a stranger occurred. On the other hand, the Commissioner did not agree with the valuation of this property which had been submitted by the parties.

The Commissioner used an independent appraisal to ascertain the value of the rental property rather than valuations provided by the landlord. Using the independent appraisal, the husband's former equity was ascertained based on his one-half beneficial interest in the property.

New financing of the property occurred upon acquisition by the landlord. An existing debt was retired and replaced by a new mortgage large enough to more than cover the balance of the equity purchased from the husband. The excess financing was disallowed.

In addition, the financial loss was calculated using the Commissioner's independent appraisal value and the allowed financing. A resulting financial loss was determined and allowed as a cost-pass-through to the extent of one-third so as to permit recovery of the loss which existed over a three year period from the time of acquisition.

The costs of appraisal and mortgage refinancing were allowed with a write off over a three year period as they were treated as non-recurring costs.

The Commissioner also made an apportionment of the costs which had been determined between the landlord's unit and those that were rented based upon the division of costs (rental units bore 56% of costs). The apportionment occurred so that the landlord's unit would bear its proportionate share of the cost justifications and only the costs that were not applicable to the landlord's unit would be applied to the rented units.

IN THE MATTER OF: Royal Oak Apartments
2401 Queen Street East
Toronto, Ontario

AND IN THE MATTER OF an application for rent review by 391885 Ontario Limited (Landlord)

APPEAL PANEL: W. Biggar, K. Timney, H. Snyder

DATE OF DECISION: October 28, 1980

FILE NUMBER: 126-TO-360

ISSUES: Financing costs - whether the Commissioner has the discretion to limit amount of such costs that will be considered.

Financial Loss - whether the Commissioner has the discretion to spread the loss over a three-year period.

The landlord of this twenty-one unit residential complex applied under section 126 of the Residential Tenancies Act for an order allowing it to increase the rents charged by more than the permitted maximum of six percent. After reviewing all of the evidence presented, Commissioner Grimson found justification for certain rent increases and issued an order dated June 12, 1980, setting out the maximum monthly rents that could be charged.

The landlord subsequently appealed this order, arguing as part of its grounds for so doing that Commissioner Grimson should not have limited his consideration of financing costs to 85 percent of the acquisition cost, and further should not have spread the demonstrated financial loss over three years.

With respect to the first point argued, it was established that Commissioner Grimson had considered the landlord's financing costs only to the extent that they did not exceed 85 percent of the acquisition cost, and in this regard had agreed with and applied Interpretation Guideline

No. RR-2. In considering the landlord's argument that the Commissioner should not have used this approach, the members of the panel had regard to sections 93 and 131 of the Act, which they maintained operate to provide the Commissioner with wide discretionary power. Section 93 provides for the exercise of such power in ascertaining the real substance of all transactions and the good faith of the parties, and in arriving at a decision upon the real merits and justice of the case. Section 131 requires the Commissioner to determine the rent increase justified by his "findings" concerning certain costs; "findings" being defined by the panel as "the conclusions arrived at after a thorough examination of the evidence", implicit in which is the Commissioner's right to exercise discretion in determining to what extent costs are acceptable in arriving at the total rent increase justified.

In order to illustrate the application of this discretionary power, the panel speculated as to situations where it would not be prudent or appropriate to accept actual financing costs, having regard to the real merits and justice of the case. Such situations were stated to include instances where a landlord refinances a building in order to obtain funds for use elsewhere than in the complex, where financing payments are abnormally high due to a short-term amortization period, where there is a "balloon" type mortgage which requires a substantial principal repayment on a certain date, and where a landlord assumes an existing mortgage which requires high payments relative to the principal outstanding at the time of purchase.

With respect to the landlord's specific ground of appeal, the panel concluded that the Act does provide to the Commissioner discretionary power to determine the extent to which financing costs should be accepted and that Commissioner Grimson properly exercised his discretion in limiting the financing costs to 85 percent of the acquisition price.

The landlord's next ground of appeal relating to the spreading of the financial loss was addressed in a similar manner by the appeal panel. It was again noted that the Commissioner has discretionary power to determine what he or she considers to be reasonable and just in the circumstances, and it was decided that Commissioner Grimson's treatment of the issue was proper.

The panel went on to consider the remainder of the landlord's arguments and in the result, the original order of Commissioner Grimson was affirmed.

IN THE MATTER OF: 33 Robinson Street
Hamilton, Ontario

AND IN THE MATTER OF an application for rent review by Sun Life Assurance Company of Canada (Landlord)

APPEAL PANEL: G. Isaac, P. Tatay, N. Doorenspleet

DATE OF ORDER: April 14, 1981

FILE NUMBER: 126-HM-121

ISSUES: Shift in responsibility for payment of cable television fees - effect on rents.

The landlord of this 121-unit residential complex applied under section 126 of the Residential Tenancies Act for an order allowing it to increase the rents charged by more than the permitted maximum of six percent.

As part of the rent review the costs of cable T.V. service were initially considered by Commissioner J. Jennings.

The landlord had changed the cable T.V. service from a bulk payment system to a tenant-pay-direct system. The pay direct system would cost tenants $6.00 per month per unit once it was installed.

At the initial hearing Commissioner Jennings ascertained that the landlord had allowed a $2.50 per month rent reduction when the pay direct system was introduced. The Commissioner allowed an additional cost reduction of $3.50 per unit in his order to offset the balance of the costs of the pay direct system.

The landlord and about half the tenants in the complex appealed Commissioner Jennings' order. A major issue was the way in which the cable T.V. service costs were dealt with. The appeal panel therefore considered these costs in detail.

The landlord had reduced rents by $2.50 per month from March 1st, 1980. On its Cost Revenue Statement the landlord showed a further reduction of $2,477 for cable T.V. representing $1.70 per unit per month reduction in its projected costs for the balance of 1980. The latter reduction had not been taken into the calculations at the initial hearing. The appeal panel adjusted the figures for the balance of 1980 accordingly.

The actual net increase in costs to tenants for cable T.V. was therefore $1.80 ($6.00 - $2.50 - $1.70), after the cost reduction for the balance of 1980 had been taken into account, rather than the amount of $3.50 which had been allowed as an additional compensation by Commissioner Jennings.

For the first part of 1980 the cost reduction had been estimated at $1,000 (prior to March). In order to establish its cost reduction on a full year's basis the landlord would require a further adjustment which should be taken into account during the review period in the succeeding year.

With the foregoing adjustments the cable T.V. service costs were resolved. The result was an adjustment in the initial award based on cable T.V. charges in favour of the landlord. The panel explained that its decision in this regard reflected the recognition of relevant facts and considerations that applied to this specific case. They declined to suggest a basis or method for compensating tenants that would apply generally to cases of changed or discontinued services.

The appeal panel then dealt with other issues which had been raised by the appellants and issued an appeal order in accordance with their conclusions.

IN THE MATTER OF:	**Upper Unit 167 Sorauren Avenue Toronto, Ontario**
BETWEEN:	**Helen Snider (Tenant) - and - Gynts and Rasa Skudra (Landlords)**
COMMISSIONER:	**S. L. Marshall**
DATE OF DECISION:	**November 10, 1980**
FILE NUMBER:	**127-TO-260**
ISSUES:	**Exemptions - section 134(1)(c) of the Residential Tenancies Act - no occupation before January 1, 1976**

The tenant of this single residential unit applied to the Commission under section 127 of the Residential Tenancies Act for an order requiring the landlord to reduce the amount of rent increase proposed.

The landlords contended that the subject premises were exempt from rent review, and thus they were permitted to raise the rent by greater than 6% without making an application to the Commission for an order permitting them to do so.

At the hearing, the landlords offered verbal evidence that to their knowledge, the subject unit had never been rented prior to January 1, 1976. The tenant, however, produced the assessment roll pertaining to this property for the years 1952-53, which indicated that tenants had lived in two portions of the house and a third portion was vacant. The landlord could produce no evidence to suggest that this information was not correct, so the Commissioner accepted it as true and ruled that the premises were not exempt from rent review. Commissioner Marshall concluded that subsection 134(1)(c) of the Act, which renders exempt from rent review "a rental unit situate in a building, no part of which was

occupied as a rental unit before the 1st day of January, 1976", must be interpreted strictly, and that therefore even one short tenancy anytime before 1976 will deprive the unit of the exemption.

Since the landlord and tenant agreed that the landlord would make an application for rent review in the required manner, the tenant's application under section 127 was dismissed.

IN THE MATTER OF: 109-111 Spadina Road West
Kitchener, Ontario

AND IN THE MATTER OF an application for rent review by Dhana Loyalty Holdings Inc. (Landlord)

COMMISSIONER: D. MacDonald

DATE OF ORDER: December 19, 1981

FILE NUMBER: 126-KT-138

ISSUES: Adjustment of review period for cost correction.

The landlord of this multi-unit residential complex applied under section 126 of the Residential Tenancies Act for an order allowing it to increase the rents charged by more than the permitted maximum of six percent. As is required on such an application the landlord submitted financial cost data purporting to cover the period from May 1, 1980 to April 30, 1981.

The landlord had owned the building only since May 30, 1980 and did not have details of the previous owner's costs prior to this date. Therefore the Commission assumed a minimal expenditure for the January to May 1980 portion of the year for maintenance costs based on the previous owner's information available at the previous rent review (1979) and the tenant's evidence given at the current (1980) rent review. The previous rent reviews had been based upon calendar year periods.

The Commissioner also felt that the costs submitted by the landlord were unacceptable as current year costs because they would entail projections of costs from November 1, 1980 to April 30, 1982. The landlord's projections would involve an inaccurate cost revenue form which did not record the full costs as indicated by invoices. The Commissioner corrected the cost revenue form and converted the costs to calendar years to

coincide with rent increase anniversary dates and to facilitate the cost correction (margin adjustment) of previously allowed costs under the 1979 rent review. Future rent reviews of this property should be continued on a calendar year basis.

IN THE MATTER OF: 75 Spencer Avenue
Toronto, Ontario

AND IN THE MATTER OF an application for rent review by Surinder Bhatia (Owner), Canadian Property Management, was shown as the Landlord for rent review purposes.

APPEAL PANEL: P. Tatay, N. Myrhorod, G. Isaac

DATE OF ORDER: June 8, 1981

FILE NUMBER: 126-TO-244

ISSUES: Operating costs - factors considered in determining whether an operating cost was properly allowed and reasonably considered.

The landlord of this multi-unit residential complex applied under section 126 of the Residential Tenancies Act for an order permitting him to increase rents by more than the permitted maximum of six percent.

After reviewing all the evidence, Commissioner Harrott found justification for certain rent increases and issued an order dated February 9th, 1981, setting out the maximum monthly rents that could be charged. Appeals from Commissioner Harrott's order were filed by 38 tenants represented by Parkdale Legal Services and the other tenants of the 72-unit building were added as parties.

As part of the appeal, a number of points not generally referred to in detail were dealt with by the appeal panel in its examination of operating costs.

Bad debts were established in relation to particular rental units. The Commissioner ascertained the names of the tenants, amounts, and time periods involved. The bad debts were not all allowed because a portion represented an unsettled claim affecting the former owner. Management attempts to collect bad debts were also considered.

Vacancies resulted in lost revenue which was broken down by unit and by time period. The vacancies were test-checked and no evidence was submitted disputing the periods of vacancies claimed. Accordingly the vacancy loss was accepted.

After determining that a superintendent was required, the prior year's per unit superintending costs were ascertained. After full consideration the panel felt that this cost item had been reasonably determined by the initial level Commissoner.

Advertising costs were included with management and administrative expenses. Normally 5% of Year 2 revenue would be allowed for this cost although additional costs would be permitted if all the costs were fully substantiated by invoices or contracts over the full 12-month period considered at this rent review.

Theft and vandalism resulted in costs to replace furniture, drapes and mattresses. These costs were treated as operating costs due to the regularity of replacements and the transient nature of the tenants. Invoices were examined and an allowance was made to cover these costs.

After considering all the factors referred to Commissioner Harrott's order was affirmed.

IN THE MATTER OF:	30 Springhurst Avenue Apartment 804 Toronto, Ontario
BETWEEN:	Reginald A. Wright (Tenant) - and - Ben Walker Limited (Landlord)
APPEAL PANEL:	E. Pollock, M. Green, N. Myrhorod
DATE OF DECISION:	March 11, 1981
FILE NUMBER:	129-TO-344
ISSUES:	Excess rents - whether rent increases paid in response to improper notices of rent increase can be ordered refunded on an application under section 129.

The tenant applied under section 129 of the Residential Tenancies Act for an order that the landlord refund excess rents paid, and for a declaration of the rent that could lawfully be charged.

The tenant's claim related to a three-year history of rent increases paid under the prior Residential Premises Rent Review Act. The tenant contended that such increases were in excess of that permitted by the legislation because the landlord's notices of rent increase were deficient and/or the service of these notices was improper. Thus, the tenant argued that the landlord should be required to refund all excess rents paid.

Commissioner Grimson referred to subsections 129(1) and (2) of the Residential Tenancies Act, which provide that no tenant is liable to pay any rent increase in excess of that permitted to be charged under Part XI of the Residential Tenancies Act or by the Residential Premises Rent Review Act. Commissioner Grimson stated that he interpreted "excess rent increase" to mean any rent increase that:

(a) is a second or subsequent increase within a 12-month period (section 124);

(b) is a rent increase of more than 6% of the previous rent in the absence of an authorizing order (section 125);

(c) is a rent increase which increases the rent beyond the maximum permitted by an order of the Commission.

The phrase was not, in his view, intended to refer to an increase that was void due to an improper notice of rent increase. Commissioner Grimson reinforced this position by reference to the use of the words "this Part" [Part XI] in subsection 129(1). The provisions of the Act relating to the form, content and service of a notice of rent increase are found in Part V of the Act, not Part XI, so the rent rebate provisions of section 129 would not be applicable since Part XI had not been contravened. The Commissioner therefore concluded that there had been no payment of excess rent in this case.

It was suggested to the parties that any dispute concerning a notice of rent increase could only be resolved in a court of competent jurisdiction, and in the result, the tenant's application was dismissed.

The tenant appealed this decision on the ground that Commissioner Grimson had erred in not finding that excess rents had been paid. The tenant relied on the Divisional Court case of Re Devitt et al. and Sawchyn et al. (1977), 14 O.R.(2d) 135 in support of this proposition, which held that a Rent Review Officer under the Residential Premises Rent Review Act has no jurisdiction to consider a landlord's application for rent review if the tenant has not been served with a proper notice of rent increase. The panel found that this case had no application in the situation at hand because this was not an application by a landlord for rent review, but an application by a tenant for a refund of excess rents. The panel then considered the remainder of the tenant's submissions and in the result, concurred with Commissioner Grimson's interpretation of the legislation. It was remarked by the panel that "while the tenant has the right to refuse to pay an increase in rent when improper notice is given by the landlord, once he pays the increased rent he has no recourse to a rebate under section 129(2) on the basis of insufficiencies in the notice or in the method of service". In the result, the decision of Commissioner Grimson dated December 1, 1980 was affirmed.

IN THE MATTER OF:	7 St. Dennis Drive Penthouse #8 Don Mills, Ontario
BETWEEN:	Charles and Susan Blanchard (Tenants) - and - Grenoble Apartments (Toronto) Ltd. (Landlord)
COMMISSIONER:	E. J. Pollock
DATE OF DECISION:	September 4, 1980
FILE NUMBER:	127-NY-093
ISSUES:	Separate charge for air-conditioner - whether imposition of such a charge constitutes a rent increase.

The tenants of this single rental unit applied to the Commission under section 127 of the Residential Tenancies Act for an order requiring the landlord to reduce the amount of the rent increase proposed for their unit.

The tenants argued in support of their application that the proposed charge of $40.00 per season for an air-conditioner effective June 1, 1980 was an increase in rent, since the rent on the unit had already been increased in January of the same year. The tenants submitted that such a charge was prohibited by sections 124 and 125 of the Act, which limit rent increases to 6% once a year.

The tenants contended that the air-conditioner charge was not part of the basic rent, because they had struck this provision from the lease before signing. The Commissioner stated that he had no jurisdiction to make a finding as to what the terms of the contractual agreement were, so the tenants' liability to pay the charge could not be an issue. It was emphasized that the only issue within the Commissioner's jurisdiction to consider was that of whether such a charge would constitute an improper rent increase.

In an attempt to establish that the extra charge for use of an air-conditioner was part of the base rent and not an increase, agent for the landlord argued that the extra charge for the air-conditioning was a condition of the previous tenancy agreement for this unit, and produced a copy of a notice to the previous tenants indicating that a separate charge was to be made for two air-conditioners. It was established however, that the previous tenants had refused to pay this fee.

The Commissioner considered the evidence and determined that even though the prior tenants had refused to pay the separate charge, it had been a condition of the prior agreement. Since there was no increase in this separate fee from that charged previously, it did not in itself constitute a rent increase, so the tenants' application was dismissed accordingly.

IN THE MATTER OF: Unit #704
10 Sunny Glenway
Don Mills, Ontario

AND IN THE MATTER OF an application for rent review by Jim Berry (Landlord)

COMMISSIONER: E. J. Pollock

DATE OF DECISION: November 10, 1980

FILE NUMBER: 126-NY-079

ISSUES: Exemptions - section 134(1)(c) of the Residential Tenancies Act - whether a condominium unit is exempt from rent review when part of the building in which it is situate was occupied as a rental unit prior to 1976.

The landlord of this single condominium unit applied under section 126 of the Residential Tenancies Act for an order allowing him to increase the rents charged by more than the permitted maximum of six percent.

The landlord provided evidence in the form of a statement from the previous owners of the unit that it had never been rented prior to 1976. The Commission contacted the previous owners by telephone and received verbal confirmation from them that they had signed the statement and that its contents were true. It was found that the previous owners had occupied the unit from the time it was constructed until mid 1976.

Commissioner Pollock consulted section 134(1)(c) of the Residential Tenancies Act which provides that a rental unit situate in a building, no part of which was occupied as a rental unit before the ist day of January, 1976, is exempt from rent review. It was Commissioner Pollock's opinion that the word "building" as used in this subsection must be interpreted in the case of a condominium to mean the individual unit rather than the building in which it is physically situated. Commissioner Pollock stated that he found it "blatantly unfair that every condominium unit in a

condominium building is caught by Part XI if one unit in that building was occupied as a rental unit before January 1, 1976, and I do not believe the legislators intended that to be the case". He therefore found it unnecessary to make a finding as to whether other units in the building had been rented prior to 1976.

In the result, Commissioner Pollock determined that the exemption did apply to the subject unit and that he had no jurisdiction to proceed. The application was dismissed accordingly.

IN THE MATTER OF: 16-20 Torrington Place
Ottawa, Ontario

AND IN THE MATTER OF an application for rent review by R. B. Briggs (Landlord)

COMMISSIONER: G. I. Mandel

DATE OF ORDER: November 26, 1980

FILE NUMBER: 126-OT-127

ISSUES: Financing costs - non-arm's length - treatment of mortgage payments where mortgagee is landlord's father and increase in interest payment voluntary.

The landlord of this six unit residential complex applied under section 126 of the Residential Tenancies Act for an order allowing him to increase the rents charged by more than the permitted maximum of six percent.

Evidence of increased costs was presented by the landlord in order to justify the proposed rent increases. With respect to financing costs, the landlord produced a letter from the second mortgagee, the landlord's father, indicating that there was to be a change in the interest rate on this mortgage from 10 percent to 15 percent effective September, 1980. It was established that the original mortgage had been granted on August 15, 1977 for a term of five years expiring on the 15th of July, 1982. The interest rate on the mortgage for this term was shown to be 10 percent; thus there was no requirement in the mortgage to renegotiate the interest rate during the period of the review. The Commissioner considered that since the landlord had accepted this increase when it was not legally necessary for him to have done so, a pass-through of this cost to the tenants in the form of increased rents was not justified. Consequently, this increase in financing costs was not included in determining the justified rent increase.

The review was then completed and the justified rent increase calculated accordingly. An appeal by the landlord from this decision was later dismissed for lack of jurisdiction, owing to the landlord's failure to promptly serve the tenants with a copy of his Notice of Appeal.

IN THE MATTER OF: Astoria Towers
2240 Weston Road
Weston, Ontario

AND IN THE MATTER OF an application for rent review by Barney River Investments Ltd. (Landlord)

APPEAL PANEL: N. Myrhorod, K. Timney, H. Snyder

DATE OF ORDER: October 31, 1980

FILE NUMBER: 126-ET-409

ISSUES: Landlord - definition - Receiver Manager

Notices of rent increase - whether errors therein will affect a landlord's application for rent review.

The landlord of this multi-unit residential complex applied under section 126 of the Residential Tenancies Act for an order allowing it to increase the rent charged by more than the permitted maximum of six percent. After reviewing all of the evidence presented, Commissioner Green found justification for certain rent increases and issued an order dated March 28, 1980 setting out the maximum monthly rents that could be charged.

Sixty-seven of the one hundred and forty-eight tenants in the complex appealed this order on several grounds. Because of the scope of the issues raised and the possibility that the rents of other tenants might be affected, the Commission exercised its authority under section 101 of the Act and added all tenants as parties to the appeal.

The tenants first brought into question the legal status of Barney River Investments Limited to appear as landlord of the complex. It was found that subsequent to the issuance of the original rent review order Touche Ross Limited had been appointed Receiver and Manager of the complex under the terms of the third mortgage. Thus, although Barney

River Investments Limited was still the registered owner of the property, it apparently did not have the authority to collect the rent. Reference was made to paragraph 1(1)(d) of the Residential Tenancies Act which defines landlord as follows:

> "landlord" includes the owner, or other person permitting occupancy of a rental unit, and his heirs assigns, personal representatives and successors in title and a person, other than a tenant occupying the rental unit, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent";

An adjournment was called and the hearing was reconvened some weeks later. At that point it was demonstrated that Touche Ross had been added as a party to the proceedings and all parties given proper notice of the reconvened hearing.

The tenants argued on the appeal, among other matters, that much confusion had been caused because the landlord had served notices of rent increase which contained errors. Also, the landlord had served on the tenants a Detailed List of Proposed Rents (Form 2A) and then purported to revoke same by serving an amended list, contributing to further confusion to the extent that the tenants did not understand the issues.

The panel noted that with respect to errors in the notices of rent increase, section 130 of the Act, which provides that the Commission may make an order under section 126 despite the fact that the landlord has not served a notice of rent increase, makes it clear that the notice of rent increase is not a matter over which the Commission has jurisdiction at a rent review hearing.

With respect to the argument concerning the amended Form 2A, the panel noted that the amendments were made and communicated to the tenants well in advance of the initial hearing and that further, only the amended Form 2A had been submitted to the Commission and formed part of the record. The panel pointed out that Form 2A is not a regulated form and thus there would appear to be no legal impediment to revoking and amending same. The tenants' arguments in this regard were therefore rejected.

The panel went on to consider the remainder of the tenants' submissions and in the result, issued an order dated October 31, 1981, setting aside the original order of Commissioner Green on other grounds involving financing costs and substituting a new order setting out new maximum monthly rents.

IN THE MATTER OF: 1760 Wilson Avenue
North York, Ontario

AND IN THE MATTER OF an application for rent review by S. Buchberger (Landlord)

COMMISSIONER: P. A. Loftus

DATE OF ORDER: July 9, 1980

FILE NUMBER: 126-NY-064

ISSUES: Financing costs - landlord gave mortgage to former partner in return for release of that partner's interest in the complex - whether these mortgage payments should be treated as an increased financing cost.

The landlord of this 27-unit residential complex applied under section 126 of the Residential Tenancies Act for an order allowing him to increase the rents charged by more than the permitted maximum of six percent.

The subject building was previously held as partnership property by S. Buchberger and F. Keist, which partnership was dissolved on February 29, 1980. Effective March 1, 1980, S. Buchberger became sole owner and thereafter commenced this application to the Commission.

As part of the determination of increased costs, financing costs for the complex were examined by the Commissioner, and it was ascertained that there were two mortgages registered against the property. The first mortgage was in favour of Crown Life in the amount of $250,000 at 10-3/4% interest per annum. The second was to F. Keist (the landlord's former partner) for a principal sum of $70,000 with annual payments of principal of $3,000 (payable monthly) and interest at 10-1/2%, which was given in return for Mr. Keist having released his interest in the subject complex. The first mortgage costs were accepted by the Commissioner as a financing cost, and the landlord submitted that the payments on the second mortgage should be similarly treated.

In deciding whether to consider the costs of this second mortgage, the Commissioner accepted the landlord's evidence that it had previously been the intention of both partners to sell the property, and that a conditional Offer to Purchase in the amount of $435,000 (proof of which was produced at the hearing) had in fact been accepted by the partners from a prospective purchaser. It was only when the offer was rendered void after the purchaser was unable to arrange financing that the present landlord decided to buy out his partner. The Commissioner considered that had the sale taken place, the new landlord's financing costs would have been much higher and thus would have contributed to a much higher rent increase than was the case here, where the only new financing was a second mortgage on favourable terms. In the result, the Commissioner decidcd to allow these second mortgage costs and therefore included them in his calculations.

The review was then concluded and the justified rent increase calculated accordingly.

IN THE MATTER OF: Riverside Gardens
671 Woolwich Street
Guelph, Ontario

AND IN THE MATTER OF an application for rent review by Sun Life Assurance Company (Landlord)

COMMISSIONER: N. Doorenspleet

DATE OF ORDER: May 9, 1980

FILE NUMBER: 126-KT-287

ISSUES: No rent increases taken in previous years even though justified - whether this should contribute to a larger increase on this application.

The landlord of this large multi-unit building applied under section 126 of the Residential Tenancies Act, for an order allowing it to increase the rents by more than the permitted maximum of six percent. The landlord contended that all capital expenditures made prior to 1980 should be considered by the Commissioner since it had never applied for rent increases over the permitted maximum percentage in the past, and therefore had supposedly never had these expenses reflected in the rents.

The Commissioner did not accept this argument, noting that he had "no jurisdiction to review and award increases retroactively". The landlord could have asked for an increase in 1978 using as part of the justification, capital expenditures incurred from 1977 to 1979. At that time the tenants could have objected to an increase on these grounds, but to allow the increase now would effectively deprive the tenants of this opportunity. The Commissioner therefore computed the justified increase without taking into account any capital expenditures made prior to the period under review.